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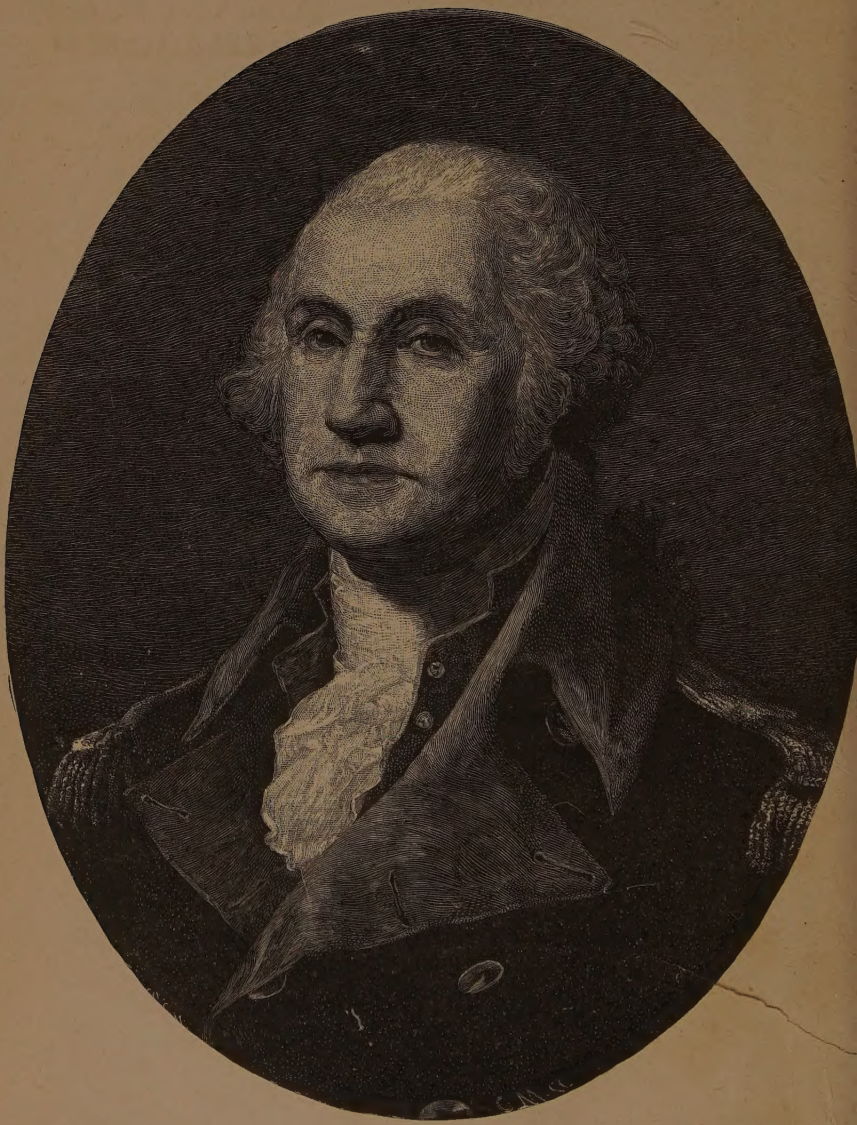

GEORGE WASHINGTON.

THE

CONSTITUTIONAL

AND

POLITICAL HISTORY

OF THE

UNITED STATES.

BY

DR. H. VON HOLST,

PROFESSOR AT THE UNIVERSITY OF FREIBURG.

TRANSLATED FROM THE GERMAN

BY JOHN J. LALOR AND ALFRED B. MASON.

1750–1833.

STATE SOVEREIGNTY AND SLAVERY.

VOL. I.

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PUBLISHERS' NOTE.

We beg leave to announce that by arrangement with the author we have secured the exclusive right to the publication of this, the only English translation which will be authorized by him.

The future volumes of the work will appear simultaneously with those of the German edition.

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TO THE

Hon. THOMAS M. COOLEY,

ONE OF THE JUSTICES OF THE

SUPREME COURT OF MICHIGAN,

AND ONE OF THE

MOST EMINENT EXPOUNDERS OF OUR CONSTITUTION,

THIS TRANSLATION IS RESPECTFULLY DEDICATED.

PREFACE.

WRITTEN IN ENGLISH BY THE AUTHOR.

The United States are about to commence the second century of their life as an independent commonwealth and as a republic. It is a curious fact that, at the same time, they evidently are entering upon a new phase of their political development. The era of buoyant youth is coming to a close: ripe and sober manhood is to take its place.

I take it to be a good omen for the success of this work that just at this moment an English translation of it is to be offered to the American public. As all the sources I have been able to use, are, without a single exception, printed books well known to every student of American politics, no new facts are to be found in the work, and I even cannot claim that new views of importance have presented themselves to my mind. Yet I trust that it will not be considered as lost labor. There are, among the authors who have written on the constitutional law or the politics of the United States, more than one, whom, in all candidness, I do not pretend to equal in many very important respects. But I venture to assert that among all the works, covering about as large a ground as mine, there is not one to be found which has been written with as much soberness of mind. And it is not strange that it should be so.

Among foreign authors there is but one whom, to some extent, I can consider as a predecessor. Tocqueville's work will always be read, not only with interest, but also with great profit. Yet even at the time it appeared, it failed to

do justice to its subject. The great French scholar was a "doctrinarian." In his writings on French subjects the weakness of his political reasoning, consequent upon this unhistorical and unpolitical turn of his mind, is to a great extent made up by the vastness and thoroughness of his positive knowledge. In his work on "Democracy in America," on the contrary, it makes itself strongly felt on every page, because he lacks the necessary positive knowledge.

As to my American predecessors I have one great advantage over all of them: I am a foreigner. This I consider to be an advantage, though, during my sojourn in the United States (1867–1872), I had frequently to hear: "You are a foreigner, you cannot fully understand our system of government."

I, of course, do not deny that there is a certain something in the character of every nation which a foreigner will never be able to completely understand, because it cannot be grasped by the judgment; it can only be felt, and in order to feel it, one's flesh and blood must be filled with the national sentiment. But, however often my shot may have missed the mark in consequence of this lack of the national sentiment, though it might greatly impair the value of the work for other foreigners, it cannot possibly be fatal to it with regard to American readers, for they have the necessary corrective in their American feeling.

On the other hand, it is much easier for a foreigner to guard his judgment from being betrayed by his feeling. He has only to ward off his prejudices. This, though no easy work, can be done to a high degree, while it is impossible to strip one's self of one's national sentiment, because this is a constitutive part of the individuality. The attempt to do it would inevitably lead from Scylla into Charybdis; it would result in an effort to do the work, so to say, as a reasoning machine without any feeling whatever. There are historians and political philosophers who pretend that

this is the only correct way to treat historical and political problems. They may be good chroniclers and quite fit statesmen for some commonwealth in the clouds, but they will never be able to write a history or to make us understand the nature and the working of the government of an actual state. There is nothing in the life of a nation into which the nation's way of feeling does not enter as a constructive element of great force; and in order to understand a nation's way of feeling one has to feel with it.

Several European critics of my work have been of opinion that my judgment of the American system of government and its working is an almost unqualified condemnation, and I do not doubt that some American readers will receive the same impression and laugh at my claiming to "feel" with the people of the United States. Yet the claim is well-founded. I came to the United States as an emigrant, and one of the first things I did was to have my declaration of intending to become a citizen registered in the city hall of New York. I, in fact, felt with the people of the United States, before I commenced to study them and their institutions. For a considerable time, however, this feeling was partly of a kind to render my studies pretty fruitless.

On the continent of Europe the United States are, even among the best educated classes, in a really astonishing degree, a *terra incognita*. Just on this account they have always been used with predilection as an illustration in the service of party ends. Their fate in this quality has been pretty varied. In quick succession and more than once they have run through all the phases from the idol to a bugbear. I was inclined to look upon them in the light of the former, for Laboulaye was the butler who had filled my knapsack of expectations. So I was rather unprepared for Tammany Hall, the first institution I got somewhat better acquainted with.

For a long time I was fairly bewildered by the throng

of most opposite impressions, and even after I had read and studied many a good book, I searched in vain for a thread to lead me safely through this labyrinth. Only very gradually I succeeded in finding out what, up to this day, seems to me the one reason why all my efforts thus far had resembled so much a wild-goose chase. Without being fully conscious of it, I expected to find in everything something particular, quite different from what was known to me either by study or by personal observation; and this all the books I had read had failed to distinctly show me as a mistake which could not but be fatal to the success of my studies. That I at last became aware of the mistake, is the explanation of the claim raised before that I have studied and written with more soberness of mind than any of my predecessors. And I beg leave to add that, after this veil had dropped from my eyes, my interest in the subject assumed quite a new character; from that moment it was decided that I had found the principal task of my life as a student and as a writer, for it is the work of a lifetime I have undertaken. Now it had fully come to what I would call my *immediate* consciousness that here was only an act of the one great drama, the history of western civilization; and that—to express it strongly in order to be distinct—the players in it, the principal ones as well as the great mass, were neither demi-gods nor devils, but *men*, struggling, under many shortcomings, but with great energy, their way onward, not with startling leaps, but advancing step by step, just as all the rest of the great nations of the earth have had to do. Nothing was left of either the misty vagueness of the grand and wonderful fairy-tale or of the prickling atmosphere of the strange puzzle; I felt myself standing in the fresh and clear air of stern historical truth.

The reflecting reader will find in this "confession of faith" the clue for the "method" of my studies, so far as he need care about it. Whether my hope, based on its

principles, is well founded, that my labor is not lost, though no new materials of any kind have been at my service, this question I have to leave to my readers to decide.

H. VON HOLST.

FREIBURG, 1875.

TRANSLATORS' NOTE.

We herewith present to the American people the first part of the most important work on the internal history of the United States that has emanated from the European press, and one of the most valuable contributions that has as yet been made to our historical literature by any writer, whether native or foreign.

We were led to undertake the task of its translation when we did because we considered the Centennial year the most opportune time for its publication. The people of the United States are just now looking back with intense interest over their past to the birth and growth of the nation, and to the lives of the great men who projected the scheme of government under which we live. At such a time they cannot but feel disposed to welcome a production in which so much ability and research have been lavished upon the subject uppermost in their thoughts. That the work is the production of an eminent foreigner, will give it a zest which it might not have coming from an American author.

Professor Von Holst possesses in an eminent degree all the qualifications necessary to fit him to accomplish his undertaking in the most creditable manner. We have heard it said that only an American can write the history of this country. As well say that Grote could not have written the history of Greece, nor Mommsen that of Rome. But if not an American, the author sojourned long enough in this country to catch the spirit of the people, of their history

and institutions. He intends, besides, before completing his work, to visit us once more. How industriously he has collected and digested the material at his command, every page of his work bears witness. Americans will not all agree with him in his estimate of the great men who founded the Republic, nor in his view of questions which have been the subject of debate here from the very beginning. But that is not to be expected. Removed from the influence of party passion, he may have formed a more impartial opinion of their character than is possible to ourselves. What the American people need more than anything else at the present time, is to take an objective view of themselves, and that is best furnished them by foreign writers.

The present volume is only an earnest of those which are to come, and which will excite, we are confident, a degree of interest not inferior to that produced by De Tocqueville's Democracy in America.

THE TRANSLATORS.

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STATE SOVEREIGNTY AND SLAVERY.

CHAPTER I.

The Origin of the Union, the Confederation and the Struggle for the Present Constitution.

The opinion is not uncommon in Europe, that American politics, up to the outbreak of the civil war, were exceedingly complicated and difficult to be understood. Such, however, is not the case. If we do not allow ourselves to be confused by matters of secondary consideration, and once get hold of the right thread, it soon becomes evident that the history of the United States, even as far back as the colonial period, is unusually simple, and the course of their development consistent in a remarkable degree.

Turgot[1] and Choiseul[2] had very early recognized that the separation of the colonies from the mother country was only a question of time; and this irrespective of the principles which might guide the colonial policy of England. The narrow and ungenerous conduct which parliament observed towards the colonies in every respect, brought about the decisive crisis long before the natural course of things and the diversity of interests growing out of this had made the breach an inevitable necessity.

[1] 1750. DeWitt, Thomas Jefferson, p. 40.

[2] 1761. Bancroft, History of the United States, IV., p. 399; DeWitt, l. c., p. 42. Durand wrote in August, 1766: "They are too rich to remain in obedience."

To this circumstance it is to be ascribed that the colonists were satisfied that an amicable solution would be found to the questions debated between them and the mother country, long after England had given the most unambiguous proof that she would not, on any consideration, yield the principle in issue. A few zealots like John Adams harbored, during the English-French colonial war, a transitory wish that the guardianship of England should cease forever. But, shortly after the conclusion of peace, there was not one to be found who would not have "rejoiced in the name of Great Britain."[1]

It was long before the ill-will, which the systematic disregard by parliament of the rights of the colonists had excited, triumphed over this feeling. Even in August and September, 1775, that is, half a year after the battle of Lexington, so strong was the Anglo-Saxon spirit of conservatism and loyalty among the colonists, that the few extremists who dared to speak of a violent disruption of all bonds entailed chastisement upon themselves and were universally censured.[2] But the eyes of the colonists had been for some time so far opened that they hoped to make an impression on parliament and the king only by the most energetic measures. They considered the situation serious enough to warrant and demand that they should be prepared for any contingency. Both of these things could evidently be accomplished in the right way and with the requisite energy, only on condition that they should act with their united strength.

The difficulties in the way of this, however, were not insignificant. The thirteen colonies had been founded in very different times and under very different circumstances. Their whole course of development, their political institu-

[1] Works of John Adams, X., p. 394.

[2] American Archives, III., pp. 21, 196, 644, etc. See also Dickinson's course towards J. Adams, in the Works of J. Adams, II., p. 423.

tions, their religious views and social relations, were so divergent, the one from the other, that it was easy to find more points of difference between them than of similarity and comparison. Besides, commercial intercourse between the distant colonies, in consequence of the great extent of their territory, the scantiness of the population,[1] and the poor means of transportation at the time, was so slight that the similarity of thought and feeling, which can be the result only of a constant and thriving trade, was wanting.

The solidarity of interests, and what was of greater importance at the time, the clear perception that a solidarity of interests existed, was therefore based mainly on the geographical situation of the colonies. Separated by the ocean, not only from the mother country, but from the rest of the civilized world, and placed upon a continent of yet unmeasured bounds, on which nature had lavished every gift, it was impossible that the thought should not come to them, that they were, indeed, called upon to found a "new world." They were not at first wholly conscious of this, but a powerful external shock made it soon apparent how widely and deeply this thought had shot its roots. They could not fail to have confidence in their own strength. Circumstances had long been teaching them to act on the principle, "Help thyself." Besides, experience had shown them, long years before, that—even leaving the repeated attacks on their rights out of the question—the leading-strings by which the mother country sought to guide their steps obstructed rather than helped their development, and this in matters which affected all the colonies alike.

Hence, from the very beginning, they considered the struggle their common cause.[2] And even if the usurpa-

[1] The census of 1790 gives the population, slaves included, at 3,929,827.

[2] The duty controversies in Massachusetts and James Otis's celebrated speech against the writs of assistance (Feb., 1761) found it is true, no echo whatever in the rest of the colonies. As early as June, 1765, however, Otis induced the Massachusetts assembly to reply to the Stamp

tions of parliament made themselves felt in some parts of the country much more severely than in others, the principle involved interested all to an equal extent.

Massachusetts recommended, in 1774, the coming together of a general congress, and on September 4, of the same year, "the delegates, nominated by the good people of these colonies,"[1] met in Philadelphia.[2]

Thus, long before the colonies thought of separation from the mother country, there was formed a revolutionary body, which virtually exercised sovereign power.[3] How far the authority of this first congress extended, according to the instructions of the delegates, it is impossible to determine with certainty at this distance of time. But it is probable that the original intention was that it should consult as to the ways and means best calculated to remove the grievances and to guaranty the rights and liberties of the colonies, and should propose to the latter a series of resolutions, furthering these objects. But the force of circumstances at the time compelled it to act and order immediately, and the people, by a consistent following of its orders, approved this transcending of their written instructions. The congress was therefore not only a revolutionary body from its origin, but its acts assumed a thoroughly revo

Act by the calling of a congress. A congress, in fact, met on Oct. 7 of the same year in New York, but only nine of the colonies were represented in it.

[1] Story, Commentaries on the Constitution of the United States, I., § 200. This peculiar designation, which the congress used in its formal enunciations, was not without significance in after years.

[2] All the colonies, with the exception of Georgia, were represented.

[3] Story, Comm. I., § 201, maintains that this congress had sovereign power both *de jure* and *de facto*. He bases his view on the fact that a part of the delegates were nominated directly by the people. But he forgets that the view that the people alone are sovereign and the only source of legitimate power, was not at that time a recognized principle of law in America. Compare Cooley on Constitutional Limitations, p. 7.

lutionary character.[1] The people, also, by recognizing its authority, placed themselves on a revolutionary footing, and did so not as belonging to the several colonies, but as a moral person; for to the extent that congress assumed power to itself and made bold to adopt measures national in their nature, to that extent the colonists declared themselves prepared henceforth to constitute one people, inasmuch as the measures taken by congress could be translated from words into deeds only with the consent of the people.[2]

This state of affairs essentially continued up to March 1, 1781. Until that time, that is, until the adoption of the articles of confederation by all the states, congress continued a revolutionary body, which was recognized by all the colonies as *de jure* and *de facto* the national government, and which as such came in contact with foreign powers and entered into engagements, the binding force of which on the whole people has never been called in question. The individual colonies, on the other hand, considered themselves, up to the time of the Declaration of Independence, as legally dependent upon England and did not take a single step which could have placed them before the mother country or the world in the light of *de facto* sovereign states. They remained colonies until the "representatives of the United States" "in the name of the good people of these colonies" solemnly declared "these united colonies" to be "free and independent states."[3] The transformation of the colonies into "states"

[1] "The powers of congress originated from necessity, and arose out of and were only limited by events, or, in other words, they were revolutionary in their very nature. Their extent depended on the exigencies and necessities of public affairs." Jay, in Ware v. Hylton, Dallas' Reports, III., p. 232; Curtis, Decisions of the Supreme Court of the United States, I., p. 176.

[2] Story's Commentaries, I., § 213. This view was shared by chief justice Jay and justices Chase and Patterson, all very distinguished statesmen of the Revolution. Story, Com., § 216.

[3] "We, therefore, the representatives of the United States, do, in the

was, therefore, not the result of the independent action of the individual colonies. It was accomplished through the "representatives of the United States;" that is, through the revolutionary congress, in the name of the whole people. Each individual colony became a state only in so far as it belonged to the United States and in so far as its population constituted a part of the people.[1] The thirteen colonies did not, as thirteen separate and mutually independent commonwealths, enter into a compact to sever the bonds which connected them with their common mother country, and at the same time to proclaim the act in a common manifesto to the world; but the "one people" of the united colonies dissolved that political connection with the English nation, and proclaimed themselves resolved, henceforth, to constitute the one perfectly independent people of the United States.[3] The Declaration of Independence did not

name of the good people of these colonies, solemnly publish . . . . that these united colonies are, and of right ought to be, free and independent states." Declaration of Independence. Compare also C. C. Pinckney's speech in the house of representatives of South Carolina, on the 18th of January, 1788. Elliott, Debates, IV., p. 301; and Ramsay, History of the United States, III., pp. 174 and 175.

[1] "The states have their *status* in the Union, and they have no other legal *status*. . . . . The Union is older than any of the states, and in fact, it created them as states. Originally some independent [i. e., independent of one another] colonies made the Union; and, in turn, the Union threw off their old dependence for them and made them states such as they are. Not one of them ever had a state constitution independent of the Union." Lincoln's message, July 4, 1861. See also King's speech in the constitutional convention, June 19, 1787. Madison Papers. Elliott, Deb., V., p. 212.

[3] The Declaration of Independence says: "When it becomes necessary for one people to dissolve the political bonds which have connected them with another people," etc. Calhoun's view that the colonies, when they separated from England, remained completely independent of one another, because they were in no wise dependent on one another as colonies, is not at all tenable. Calhoun relies, in this instance, as in so many others, on a logical abstraction, undisturbed by the contradiction of the most undeniable historical facts. See Calhoun, A Disquisition on Government, Works, I., p. 190. Besides, Calhoun is here, as in his

create thirteen sovereign states, but the representatives of the people declared that the former English colonies, under the name which they had assumed of the United States of America, became, from the fourth day of July, 1776, a sovereign state and a member of the family of nations, recognized by the law of nations; and further, that the people would support their representatives with their blood and treasure, in their endeavor to make this declaration a universally recognized fact. Neither congress nor the people relied in this upon any positive right belonging either to the individual colonies or to the colonies as a whole. Rather did the Declaration of Independence and the war destroy all existing political jural relations, and seek their moral justification in the right of revolution inherent in every people in extreme emergencies.

It is important to keep these points in view, for they became of the very highest importance in later years, remote as it was from the congresses of 1774 and 1775, and in part from that of 1776, to subject these subtle questions to an exhaustive investigation—*Inter arma silent leges.* Congress had not the time to submit its powers to a painful and minute analysis. The moment that resistance to the mother country ceased to be confined to legal and

nullification doctrine, Jefferson's disciple. He accepts throughout the premises of his master. Unlike the latter, however, he does not stop half way, but carries them out, with the most relentless logic, to their remotest conclusion. Jefferson considered the Union an alliance formed only for the purpose of shaking off the control of the mother country, and one which should have ceased "of itself" when that object was attained. Says he: "The alliance between the states under the old articles of confederation, for the purpose of joint defense against the aggressions of Great Britain, was found insufficient, as treaties of alliance generally are, to enforce compliance with their mutual stipulations; and these once fulfilled, that bond was to expire of itself, and each state to become sovereign and independent in all things." See also Curtis, History of the Constitution, I., p. 39, etc.; Farrar, Manual of the Constitution, pp. 50, 51; Hurd, Law of Freedom and Bondage, I., p. 408, and II., p. 354.

peaceable measures, and recourse was had to force, questions of law were naturally little considered. The Declaration of Independence put them aside completely. The question now was one of facts, and the facts were as related above.

Even in the regulation and transformation of their internal affairs, the individual colonies did not take the initiative, although they refused obedience to the constituted powers in so far as these sided with England. It was not until congress[1] had recommended them to do so that they took the reins into their own hands.[2]

As far as the legality or illegality of this step is concerned, it is entirely indifferent whether it was the legislative bodies of the several colonies themselves, or congress, or the spontaneous act of the people of the several colonies, that gave the impetus to it; it was under any and all circumstances illegal. The colonies were engaged in a revolution, and therefore there is nothing to be said of a legal sanction of their measures. But the same blow which had destroyed the bonds between the colonies and the mother country, threw down the walls which had hitherto prevented the political union of the thirteen colonies. They were, in fact, thrown together so as to constitute them one people, endeavoring to conquer their national independence with the sword. This fact could be changed in nothing, no matter how much it was desired, when the new state

[1] May 10, 1776. Journal of Congress, II., pp., 166, 174. Farrar Manual of the Constitution, p. 95. Story, Com., I., § 204.

[2] New Hampshire alone had, before this recommendation of congress given herself a government (Dec., 1775), but she expressly declared the new order of things to be provisional "during the unhappy and unnatural contest with Great Britain." The declarations of New Jersey and of South Carolina contained similar clauses, but more explicitly framed. Virginia alone completely dissolved her government as it existed formerly under the crown of Great Britain. The other states obeyed the recommendation of congress only after the publication of the Declaration of Independence.

was being subsequently organized on a legal basis, to retain something of the separate existence of the colonial period.

Congress had, with the consent of the people, taken the initiative in the transformation of the thirteen colonies into one sovereign state. It became thereby *per se* the national government *de facto* and by the success of the Revolution gave its acts, both earlier and later, an additional and legally binding force.

Political theories had nothing to do with this development of things. It was the natural result of given circumstances and was an accomplished fact before anyone thought of the legal consequences which might subsequently be deduced from it. But it was clear from the very first that the masses of the people, as well as the leaders of the movement, would almost unanimously oppose to the utmost the practical enforcement of these legal consequences.

If the Revolution threw down the barriers which divided the English dependencies in America into thirteen independent colonies; if it, in fact, constituted an American people,—it is obvious that both law and equity demanded that not the former thirteen colonies should be represented in congress, but the population of the colonies as a part of the people. This consequence was too palpably plain to remain completely unnoticed. Patrick Henry of Virginia showed how this was at once the irresistible conclusion of reason, and the only right policy. In the congress of 1774 he thus solemnly expressed himself: "Government is dissolved. . . . . Where are your landmarks, your boundaries of colonies? . . . . The distinctions between Virginians, Pennsylvanians, New Yorkers, and New Englanders are no more. I am not a Virginian: I am an American. Slaves are to be thrown out of the question, and if the freemen can be represented according to their numbers, I am satisfied. I go upon the supposition that government

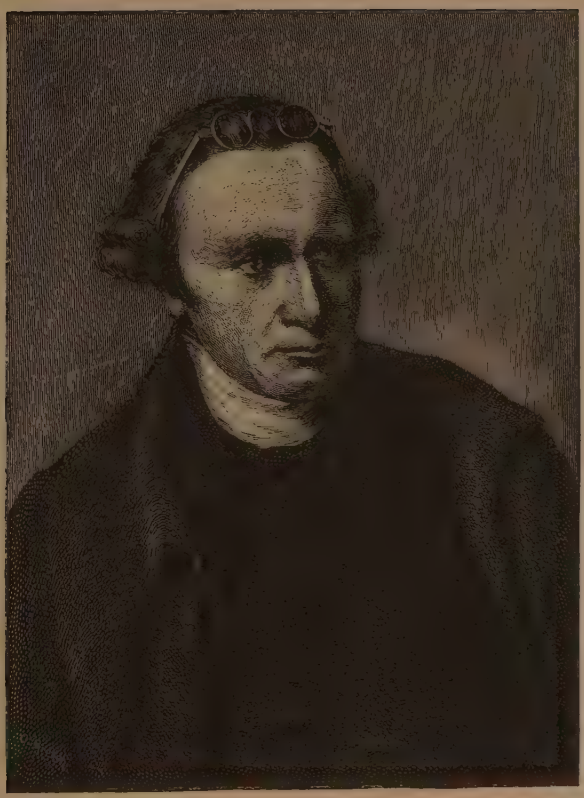
is at an end. All distinctions are thrown down; all America is thrown into one mass."[1]

Congress could not resolve at once to take a decided position on this question. It decreed that "each colony or province" should have one vote; the congress not being possessed of, nor then able to procure, materials for ascertaining the importance of each colony.[2]

Patrick Henry's view was then indirectly looked upon as right in principle, whereas the opposite principle had been virtually adopted before, and sedulous efforts were made to avoid any definite expression of the view that was to prevail. Thus was begun that infinite series of compromises by which the American people have endeavored to put to one side, by devising and passing resolutions which might be construed at will in senses the most diametrically opposite, difficulties which they ought to have grappled with and overcome. By this mode of procedure delay has been gained in every instance, and this gain has frequently been of the highest importance. But when the direct conflict of opposing views could no longer be postponed, the struggle became more obstinate and embittered, in proportion as the delay was greater. It is not possible, at this distance of time, to say with any certainty, whether the urgency of circumstances, the en-

[1] Works of John Adams, II., pp. 365, 368. Wirt, in his Life of Patrick Henry, pp. 124, 125, gives a glowing description of this speech. The few sentences to be found in Adams are all that have come down to posterity, but the audience unanimously testified to the powerful impression it made on them. See Curtis, History of the Const., I., p. 15; DeWitt, Th. Jefferson, p. 76; Greene, Historical View of the American Revolution, p. 81.

[2] Sept. 6, 1774. Elliott, Debates, V., p. 181; Pitkin, A Political and Civil History of the United States of America, I., p. 283. The delegates of Connecticut wrote, October 10, 1774, to governor Trumbull: "The mode of voting in this congress was first resolved upon; which was, that each colony should have one voice; but as this was objected to as unequal, an entry was made on the journals to prevent its being drawn into precedent."



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thusiasm of the hour, or a want of insight into the importance of the question, moved congress to postpone its final decision; but it is probable that the three causes co-operated to this end. This much is certain, however, that nearly all the representatives, the moment they gave any real attention to the matter, declared, without a moment's hesitation, against Patrick Henry's views.

Franklin's confederation scheme of 1754 suited the colonies as little as it did the mother country. It imposed no limitations or restrictions whatever in the interest of the general good, although the French invasion called most urgently for common action. And there had been no essential change as yet in this feeling, although the magnitude of the dangers threatening the colonies, and the importance of the matters in controversy, made them more inclined to a firmer union among themselves, so far as this was necessary to resist the common enemy. But in regard to their relations to one another they were involved in the same short-sighted and ungenerous particularism as before. "A little colony has its all at stake as well as a great one," major Sullivan bluntly replied to the patriotic effusion of Patrick Henry.[1] This showed clearly that only the common interests of the colonies induced them to make opposition to England their common cause, or at least that their community of interests did vastly more to bring this about than did a feeling of nationality, for which the war first paved the way.

The colonists were certainly not wanting in a kind of national feeling; but it did more to dampen the energy of their opposition to England than to increase it. It had scarcely any influence on their attitude towards one another; for it had its roots, not in the soil of the new world, but in the home of their ancestors.[2] As long as it was not be-

[1] John Adams, Works, II., p. 366.

[2] This fact is frequently too much lost sight of in Europe. The colonists severed themselves from England with bleeding hearts. Greene

yond a doubt that the breach with England was incurable, and until the old love and veneration for the mother country was changed to bitter hatred, nearly all the colonists were first the children of their own particular colony and then of England. The name American was up to that time little more than a beautiful prophetic vision. It received the impress of a definite and lasting reality only through the war of Independence.[2]

Hence the question, how the people were to be represented and to vote in congress was decided even before it was raised. Luther Martin says rightly in his celebrated

describes their feelings for the mother country in the following words: "They loved their mother country with the love of children who, forsaking their homes under strong provocation, turn back to them in thought, when time has blunted the sense of injury, with a lively recollection of early associations and endearments, a tenderness and a longing not altogether free from self-reproach. To go to England was to go home. To have been there was a claim to special consideration. They studied English history as the beginning of their own; a first chapter which all must master thoroughly who would understand the sequel. England's literature was their literature. Her great men were their great men. And when her flag waved over them, they felt as if the spirit which had borne it in triumph over so many bloody fields had descended upon them with all its inspiration and all its glory · · · They loved to talk of Saint Paul's and Westminster Abbey; and with the Hudson and the Potomac before their eyes, could hardly persuade themselves that the Thames was not the first of rivers. More especially did they rejoice to see Englishmen and converse with them. The very name was a talisman that opened every door, broke down the barriers of the most exclusive circle, and transformed the dull retailer of crude opinions and stale jests into a critic and a wit." (Hist. View of the American Rev., pp. 5, 6.) The relation of England to the colonies he, on the other hand, characterizes as "a mere business relation." Ibid, p. 12. The same judgment was expressed by very distinguished Englishmen. Thus Adam Smith: "A great empire has been established for the sole purpose of raising up a nation of customers, who should be obliged to buy from the shops of our different producers all the goods with which those could supply them." Inquiry into the Nature and Causes of the Wealth of Nations, II., p. 517.

[2] See an article in the London Public Advertiser, March 14, 1781. Moore, Diary of the American Revolution, II, p. 395.

letter to the Maryland convention that the voting by states was not on account of "necessity or expediency," but that "on the contrary, it was adopted on the principle of the rights of man and the rights of states."[1] In congress, however, Patrick Henry's view still found some warm supporters,[2] but the larger states did not feel themselves justified in insisting on their demand, glad as they would have been to have seen it acknowledged. Among the numberless amendments to the articles of confederation suggested by the several states, there is not one proposing a change of the provision governing the mode of representation or the manner of voting.[3]

Reason was unquestionably on the side of those who advocated the national view. "It has been said that congress is a representation of states, not of individuals. I say that the objects of its care are the individuals of the states. It is strange that annexing the name 'state' to ten thousand men should give them an equal right with forty thousand. This must be the effect of magic, not of reason."[4] It was not easy to advance any rational argument against this reasoning of Wilson. But actual circumstances are of more weight in politics than abstract

[1] 1788. Elliott's Debates, I., p. 355.

[2] Luther Martin's assertion in the letter above referred to, that Virginia was the one state which represented this view, is not correct. Lynch agreed with Henry, and desired only that besides population, "property" should be considered. Adams agreed in this, but relied also on the fact that congress could not at that moment ascertain the population. Wilson was afterwards one of the most ardent advocates of the *per capita* mode of representation. The sketch of a federal constitution submitted by Franklin, July 21, 1775, to congress, provided that there should be one representative for every five thousand people. G. Morris, to judge from a speech delivered by him in the "New York congress," considered the *per capita* mode of representation a matter of course. Sparks, Life of Gouv. Morris, I., p. 103; see also Elliott, Deb. I., pp. 74-76.

[3] See Elliott, Deb., I., pp. 85-92.

[4] Wilson of Pennsylvania, 1777, in the debates upon the confederation. See Elliott, Deb., I., p. 78.

theories, however conformable to the demands of reason these latter may be. The conclusion drawn by Wilson from these premises was therefore erroneous, spite of the fact that his argument was formally correct. He closed the argument with these words: "As to those matters which are referred to congress we are not so many states: we are one large state. We lay aside our individuality whenever we come here."

This might be desirable in the highest degree, but it was not a fact. "The individuality of the colonies" was not, in reality, as Adams claimed,[1] a "mere sound;" it was an undeniable fact, which made itself felt at every step. Wilson, therefore, demanded an impossibility when he asked that the representatives should put it aside, and leave it at home when they came to congress, as if it were a garment. This might have been possible to Wilson, for he was not born and had not grown up in America. But particularism had become to such an extent part of the flesh and blood of the native-born colonists that it could not be renounced; nay, that it became a measure of necessity to acknowledge its supremacy after the first moment of excitement was over, and the separate interests of the states came in conflict, whether really or only apparently, with the general welfare.

John Adams, Wilson's most energetic supporter, affords the strongest proof of this. Reason compelled him to adopt the national view, and he defended it with great zeal so long as his feelings did not get the better of his understanding. The moment, however, that he allowed his affections to have sway, he gave evidence of his leaning towards the doctrines of the particularists.

His whole reasoning is, in consequence of this internal conflict, a curious mixture of intimately connected contradictions, and affords a striking illustration of Hamilton's

[1] Elliott, Deb., I., p. 76.

saying that men are rather "reasoning than reasonable" animals; and that, therefore, in the solution of political problems no valuable or lasting results can be obtained by relying solely on the reason.[1]

Adams said, in the debate on the articles of confederation: "The confederacy is to make us one individual only; it is to form us, like separate parcels of metal, into one common mass. We shall no longer retain our separate individuality, but become a single individual as to all questions submitted to the confederacy."[2]

Adams had no doubt that this was possible, and he can scarcely be reproached on that account, as the whole American people cherished the same belief until late in the civil war, and, for the most part, still cling to the same in theory. The dictates of reason, however, could not be made absolutely to harmonize with the desires of the people, or with actual facts over which congress had no control. It was not mere caprice that from the very first moment this led to unconscious efforts to find in words a solution for the insoluble contradiction.

"Wo die Begriffe fehlen, da stellt zu rechter Zeit ein Wort sich ein."[3] One man[4] alone saw clearly from the first that it would have been as profitable to rack one's brains in the vain endeavor to square the circle.

The American statesman's dictionary was written in double columns, and the chief terms of his vocabulary were not infrequently inserted twice: in the right-hand column in the sense which accorded with actual facts and was in keeping with the tendency towards particularism; in

[1] "Nothing is more fallacious than to expect to produce any valuable or permanent results in political projects by relying merely on the reason of men. Men are rather reasoning than reasonable animals, for the most part governed by passion." Hamilton to J. A. Bayard, April, 1802, Hamilton's Works, VI., p. 540.

[2] Elliott, Deb., I., p. 76.

[3] Where ideas are wanting, a timely word may take their place.

[4] Alexander Hamilton.

the left in their logical sense, and the sense which the logic of facts has gradually and through many a bitter struggle brought out into bold relief, and which it will finally stamp as their exclusive meaning.

Nothing but the bitter experience of many years has been able to make American statesmen even partially conscious that they have been using this double-columned political lexicon. The nature of the state was to such an extent a seven-sealed enigma to them, that they, *bona fide* and in the very same breath, used the same word in the most opposite senses, and employed words as synonymous which denoted ideas absolutely irreconcilable.

It never occurred to the acute Adams that an "individual" could never be formed of a "confederation," that is, of an association of thirteen states; that it was a contradiction to require that the confederation, in all matters of which it had cognizance, should be a single individual. When words are used so arbitrarily that the terms "association," "confederation," and "individual" are considered identical in meaning, it is not hard to make the most impossible things seem possible; nor is it to be wondered at that the Americans ventured to out-do the mystery of the Trinity by endeavoring to make thirteen one, while leaving the one thirteen.[1]

The practical realization of this theoretical piece of art was also not difficult; but the results were as melancholy as they were simple. Washington demonstrated in a single word the untenableness of the theory, the absurd spectacle presented by its realization, and the disastrous consequences which it entailed. He writes, 1785: "The world must feel and see that the Union or the states individually are sov-

[1] "Thirteen sovereignties were considered as emerged from the principles of the revolution, combined with local convenience and considerations, the people nevertheless continuing to consider themselves in a national point of view as one people." Jay in Chisholm v. Georgia, Dallas, Rep., II., p. 470. Curtis' Decisions of the Supreme Court, I., p. 60

ereign as best suits their purposes; in a word, that we are one nation to-day and thirteen to-morrow. Who will treat with us on such terms?"[1]

"To balance a large state or society, whether monarchical or republican, on general laws, is a work of so great difficulty that no human genius, however comprehensive, is able by the mere dint of reason and reflection to effect it. The judgments of many must unite in this work. Experience must guide their labor. Time must bring it to perfection, and the feeling of inconveniences must correct the mistakes which they inevitably fall into in their first trials and experiments."[2]

When the American people saw themselves compelled to transform the former thirteen colonies into a political unity, they were not only destitute of all practical experience, but they were not yet clear in their own minds how far they should seek to bring about such a unity.[3]

They were, in addition to this, unused to theorizing on the laws of state organization. Lastly, they had no leisure to grapple profoundly with the many new and difficult questions which arose, without compromising their whole future from the very beginning.

It is not therefore to be wondered at that reason and reflection made themselves less felt than might have been

[1] Marshall's Life of Washington, II., p. 97; Life of Hamilton, II., p. 331.

[2] Hume, The Rise of the Arts and Sciences, Essays, I., p. 128, London, 1784.

[3] The Mississippi question is, through its various stages, one of the most instructive chapters in the history of the gradual expansion of the narrow colonial horizon to the conception of a real national power, and, finally, of a continental republic. Draper (History of the American Civil War, I., p. 201), speaking of the universal and complete ignoring of its significance, even after the close of the revolutionary war, says: "Even Washington, so late as 1784, did not think that the ownership of the Mississippi would be of benefit to the republic; but, on the contrary, was afraid that it might tend to separate the western country

expected from the character of the men who composed the first congress, had the circumstances surrounding them been different. It was above all things important to satisfy the demands of the moment, which became greater from day to day and assumed a more complicated character, for the reason that the revolutionary movement gradually but necessarily extended beyond its original purpose and began to embrace objects not at first contemplated. It was in the very nature of things that even in the most important matters action frequently followed on the impulse of the moment, and that the leaders of the revolution did not take heed what might be the logical consequences which at some future time might be drawn therefrom, or what practical results might follow from it, when there should have been a radical change in circumstances, at this moment beyond the possibility of conjecture. This may be regretted, but it were as foolish to reprove the founders of the republic on this account as it would be absurd to deny the fact.

Further, as there was a glaring contradiction in the actual state of things, it was a natural and inevitable consequence that the practical measures of congress at first should present a striking contrast to one another. The struggle with England demanded that the colonies should cling closely and firmly together. The more this struggle, therefore, engaged their attention at the moment, the more did the steps taken by congress assume a national character. And the more exclusively attention was given to the question of regulating the relations of the colonies or states to one another, the more did the spirit of particular-

from the Atlantic states. His ideas slowly expanded from an Atlantic border to a continental republic. He wished to draw commerce down the little streams that run through the old colonies. In these views he was by no means singular, the general opinion of the time being that the chief value of the western lands was for the payment of the public debt."

ism obtain sway. The colonies had not yet realized that, aside from their struggle with England, it was their interest that their fusion should be as complete as possible.

Moreover, these opposing views did not stand directly arrayed against each other, but the divergent interests demanded in all important questions almost equal consideration. The contradiction between the various acts of congress became, in consequence, ever greater and more bizarre; while in congress and out of it the obscurity prevailing as to the meaning of words, and the confusion of theories, kept increasing, and the separate interests of the colonies came by degrees to be the only ones which were consulted.

At the very moment that congress recognized that complete separation was the possible and even probable consequence of the quarrel with the mother country, it framed the resolution which has been formally[1] the seed from which all internal conflicts have sprung, and which, up to the year 1865, and after, shook the Union to its center.

On the 7th of June, 1776, certain resolutions contemplating the separation of the colonies from the mother country were introduced; and on the 10th of June it was resolved to appoint a committee to draw up the declaration that "these united colonies" are "free and independent states."

[1] I would again insist that the real cause is to be sought for, not in any ill-judged resolution of congress, but in the actual condition of affairs. The whole secret of American history is contained in these words of Gerry: "We are neither the same nation nor different nations. We ought not, therefore, to pursue the one or the other of these ideas too closely." Elliott, Deb., V., p. 278. This fact explains all the internal conflicts of the Union up to the year 1865. And this fact could not be legislated out of existence, or cease to be a fact in consequence of a spontaneous act of popular volition. It is an altogether different question to what extent political ignorance and moral weakness or corruption contributed to perpetuate these opposite views, and thus to make them more pronounced, so that a violent disruption became inevitable, and after many a crisis had been happily passed, the cure was unduly delayed.

On the following day this committee, and another to elaborate a scheme of confederation, were chosen. No one perceived the contradiction lurking in these two acts, which becomes apparent when they are subjected to a close verbal criticism.

On the fourth of July, the Declaration of Independence was adopted, the import of which, as has been already remarked, was in accordance with the resolution of the 10th of June. Eight days later, on the 12th of July, the last-named committee submitted to congress the draft of the articles of confederation. On the 15th of November, 1777, the articles, after they had undergone several amendments, were accepted by congress, and it was resolved to recommend them to the legislatures of the states for adoption. The united colonies had, therefore, existed over a year by virtue of the sovereign will of the people as an independent political commonwealth, when congress submitted a plan to the state legislatures, which placed this commonwealth on a basis essentially different from that on which it had hitherto reposed.

When the legislatures of all the states had ratified the plan on the 1st of March, 1781, the new constitution was universally recognized as law. That the legislatures had no right whatever to vote on its adoption or rejection was completely overlooked. The legislatures were not purely revolutionary bodies existing only as *de facto* governments. Their powers had a legal character and were strictly determined by the constitutions which the people of the several states had given themselves in obedience to the order of the revolutionary and therefore unrestricted congress, and after they had been absolved, by its Declaration of the fourth of July, 1776, from all allegiance to England. Every step, therefore, taken by the legislatures in excess of the powers reserved to them in their several constitutions was *ipso facto* wanting in binding legal force. But none of the legislatures had constitutional authority

to vote on a plan of a constitution for the Union.[1] As to the legal validity of the act, it was a clear case of usurpation based on an untenable fiction. But this fiction was then considered an unquestionable right, and naturally the act itself was not therefore viewed in the light of a usurpation. The consequence was, that, in the course of time, this fiction was looked upon not only as an unquestionable right, but as a notorious fact, which had been always recognized, whereas, in reality, it gradually became a fact, at least in part, only as a result of this confusion of ideas.

In the scheme of confederation which Franklin introduced into congress on the 21st of July, 1775, there was, of course, no question of a "sovereignty" of the colonies. Neither is the expression to be found in the articles of confederation reported July 12, 1776, *i. e.* after the united colonies had become a political community, by the committee appointed on June 11. The third article only declares that "each colony shall retain as much of its present laws, right and customs as it may think fit," and may "reserve" to itself the regulation of its internal affairs so far as they do not conflict with the articles of confederation.[2]

[1] Several of the states declared themselves in their constitutions as completely sovereign. Thus the constitution of New York recites that all power in the state has again reverted to the people. Declarations to the same effect are to be found in the constitutions of Maryland, North Carolina, Massachusetts and New Hampshire. Farrar's Manual of the Constitution, pp. 101-103. From what has been said hitherto and from what follows in the text, it is evident that these declarations are a contradiction of facts, at the same time that they are destitute of all legal foundation. But even if the states were actually and legally completely sovereign, the legislatures were guilty of usurpation. "If the state in its political capacity had it [the right], it would not follow that the legislature possessed it. That must depend upon the powers confided to the state legislature by its own constitution. A state and the legislature of a state are quite different political beings." Story, Comm., I., § 628.

[2] "Each colony shall retain as much of its present laws, rights and customs as it may think fit, and reserve to itself the sole and exclusive

The debates on this proposition continued to the 20th of August, 1776. Then the question was allowed to rest entirely until the 7th of April, 1777. It was in the subsequent debates, which closed on the 15th of November, 1777, that the radical change which gave the advocates of particularism the legal basis from which they carried on their operations, was made. In the three previous proposals,[1] the article relating to the union preceded that on the reserved rights of the colonies or states. Now, on the contrary, the order was reversed, and it was expressly provided that each state "retains its sovereignty."[2] John Quincy Adams pertinently inquired how each state could retain a sovereignty which it never possessed.[3] "The independence of each separate state had never been declared of right. It never existed as fact."[4]

regulation and government of its internal police in all matters that shall not interfere with the articles of this confederation."

[1] That of Franklin in July, 1775; that of the select committee in July, 1776; and that of the committee of the whole of Aug. 20, 1776.

[2] "Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in congress assembled."

[3] "Where then did each state get the sovereignty, freedom and independence which the articles of confederation declare it retains?—not from the whole people of the whole Union—not from the Declaration of Independence—not from the people of the state itself. It was assumed by agreement between the legislatures of the several states and their delegates in congress, without authority from or consultation with the people at all." J. Q. Adams, Discourse on the Constitution, p. 19. Calhoun characterizes the confederation as "strictly a union of the state governments." Calhoun's Works, VI., p. 159.

[4] J. Q. Adams, l. c, p. 15. See also Charles C. Pinckney in Elliot's Deb., IV., p. 301. Washington says in his address of the 8th of June to the governors of the several states: "It is only in our united character that we are known as an empire, that our independence is acknowledged." Marshall, Life of Washington, II., p. 84. See also Farrar, Manual of the Constitution, p. 52; The Federalist, No. II.; Brownson, The American Republic, p. 208; Curtis, History of the Constitution, I. p. 39, etc. Madison also declared, on the 29th of June, 1787, in the convention at Philadelphia: "The states never possessed the essential

The articles of confederation start out with the assumption that from the date of the Declaration of Independence each state became *de facto* and *de jure* an independent state, competent henceforth to form a confederacy with the other states whenever it saw fit, and to the extent that it saw fit. How this assumption was to be reconciled with the fact that the congress had been in existence for years, and had actually exercised sovereign power from the first, while the individual states had assumed no sovereign attitude, theoretically or practically, towards England or other foreign countries, does not appear. The contradiction is, however, easily explained.

The place that congress occupied was determined entirely by the relations of the colonies to England. On the other hand, the principle underlying the articles of confederation was borrowed exclusively from the relations of the colonies to one another. Until the resolution was taken to change the dependency of colonial existence for the independence of a political organization, the consideration of the former dictated all measures; now the latter occupied the foreground because the war with England created only a temporary want, while the regulation of internal relations was destined to be lasting.

Apparently and formally, the unity which this want and the presumptive future relations of the United States to foreign powers caused to seem desirable, was preserved. The individual states had attributed to themselves, in the articles of confederation, no powers which could place them in relation to foreign nations in the light of sovereign states. They felt that all such claims would be considered ridiculous, because back of these claims there was no real corresponding power. Congress therefore remained, as heretofore, the sole outward representative of sovereignty.

rights of sovereignty." Yates's Minutes, Elliott, Deb., I., p. 461. Compare with this the view advocated by him in 1798 and 1799, of which I shall treat more fully hereafter.

But the power to exercise the prerogatives was taken from it, and this without placing it in any other hands.

The changes effected by the articles of confederation were rather of a negative than of a positive nature. They did not give the state which was just coming into being a definite form, but they began the work of its dissolution. The essential prerogatives which necessarily belong to a political community in its relations with other powers, they confided by law to confederate authorities, from whom, in practice, they withheld all power. On the other hand, they confided all actual power to the component parts of the whole, but did not and could not for themselves, still less for the whole, give them the right to assume the responsibilities or enforce the rights which regulate the relations of sovereign states.

The practical result of this was that the United States tended more and more to split up into thirteen independent republics, and in the same measure, they virtually ceased to be a member of the family of nations bound together by the *jus gentium*. The European powers rightly saw in the Union only a shadow without substance,[1] and besides they had no occasion and no desire to have any relations with the individual states as sovereign bodies.[2]

[1] Washington wrote in October, 1785: "In a word, the confederation seems to me to be little more than a shadow without the substance; and congress a nugatory body." Marshall's Life of Wash., II., p. 92. See also the Federalist, Nos. 15-22.

[2] "The states were not 'sovereigns' in the sense contended for by some. They did not possess the peculiar features of sovereignty—they could not make war, nor alliances nor treaties. Considering them as political beings, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs of defense or offense, for they could not of themselves raise troops, or equip vessels, for war." King, on the 19th of June, in the Philadelphia convention, Madison Papers; Elliott, Deb., V., p. 212. Ruffin called attention in the debates of the peace convention at Washington, February, 1861, to the fact that during the revolutionary war North Carolina had laid the foundation of

Every existing circumstance, and in some respects even the war with England, tended to give affairs this peculiar development.

A new government not founded on force will never immediately obtain strength and stability, for, on the one hand, it generally itself originates in a violent revolution which is always to a certain extent attended by a tendency to anarchy, and on the other hand, is wanting in the powerful aids of custom and inherited respect. The new government of the United States had much to suffer from the absence of both these elements. The sovereignty of the Union was an abstraction, an artificial idea which could be made a reality, only inasmuch as the circumstances which had made this idea a necessity should imperatively demand it. The sovereignty of the states, on the other hand, was, in the minds of the whole people, the first and most natural of all circumstances. Each colony had had from its beginning a government of its own, which in great part was the production of the colonists themselves. The Revolution had now put into their hands that portion of power which previously had been exercised by English officials. The further alterations made in the machinery of government were not of so essential a nature that the people would be apt to feel themselves complete strangers to its operation. The entire transformation was rapidly accomplished, without any of the violent commotions which might have produced prolonged reaction. Eight states[1] had already completed their new constitutions in 1776. In the relations of individuals to the government, there was nothing to show how wide a breach divided the past from

a fleet, to which Orth of Indiana replied: "There, then, we have a single instance of one of the states taking a step towards sovereignty." None of the delegates from the southern states could adduce another instance. Chittenden, Debates of the Peace Convention, p. 262.

[1] New Jersey, Delaware, Maryland, North Carolina, New Hampshire, South Carolina, Virginia, and Pennsylvania.

the present. The courts administered justice in accordance with the same legal principles and precedents, and the legislatures, elected by the vote of the people, made laws and levied taxes as they had done before, but without being subjected to the control or caprice of a royal governor. In a word, long before the close of the war, it was difficult to realize from the whole mode of civil life and action that a violent revolution was being accomplished.

It was not an easy task for the colonists to resort to the sword. But stanch and sincere as was their loyalty, their love and veneration for the mother country had by no means been rooted as firmly in the real condition of things as they themselves supposed. The greater number were acquainted with England only through the accounts of their fathers and grandfathers. But with their own colonial government, so far as it had sprung from themselves and been established by themselves, their affections were intimately entwined, for they had grown up with it. It was flesh of their flesh and bone of their bone, and it was always considered by them as their only real representative. There was no need of prior reflection to convince the citizens of the significance and importance of colonial government. Having grown up in constant and immediate dependence upon it, they were permeated by the feeling of its necessity and legality. Love and interest conspired to attach them to it, for they knew full well that their votes had a share in its formation. They looked upon it as the natural bulwark of their rights and liberties.

If that was the case in the past, it must be much more so now, for all these bonds could only be strengthened by the amplification of the power of the colonial governments produced by the Revolution.

To counterbalance all this, the federal government had only the war with England to place in the scales. The love and respect generally accorded by a people to their government it could certainly not have, for it was a child of

yesterday and no one had as yet cast its horoscope. It was a product of the Revolution, and as such the practical good sense of the American people did not permit them to refuse it the completest recognition. But what should become of it later was an open question, which was by degrees submitted to serious and sober consideration. No umbrage was taken that the federal government had existed already nearly five years, with the revolutionary character it had assumed after the Declaration of Independence, and all attempts authentically to establish its legitimacy were vain. Respect for it was neither increased nor diminished by this means.

Congress, up to the 1st of March, 1781, did not look upon the articles of confederation as the rule by which it was to be guided, any more than it did afterwards, and the states gave no more consideration to the wishes, requests, and commands of congress after the 1st of March, 1781, than they had before. The people, during these five years, took to looking upon congress more and more as a creation of the Revolution, which had its *raison d'être* and was necessary only on account of the war with England. Hence they thought every good citizen bound to yield it just so much obedience as the legitimate power, the state government, commanded him to give it.

The state governments had, in five years, completely lost[1] the little revolutionary savor which at first might have been observable in civil life. The government of the Union, on the other hand, suggested no immediate idea whatever to the people. It was a means which the states employed to secure a definite object; it was not, like the state governments, the incorporation of a moral idea possessed of independent life in the minds of the people.

[1] Webster says: "The Revolution of 1776 did not subvert government in all its forms. It did not subvert local laws and local administrations." Webster's Works, III., p. 460.

And if, in the first stages of the Revolution, it sometimes appeared that there was a conscious struggle gradually to endow this abstraction of one American people with reality, not only all efforts to that effect, but all desires having such a tendency, were nipped in the bud.[1]

If it had been possible immediately to elaborate a constitution which in some essential points should have had a national basis, and to secure its instant adoption by the states, the people might have gradually adapted themselves to it. The disorders of war, which frequently made extraordinary measures necessary, might have contributed a great deal to bring about, in a short time, the union of the various elements. But with the single exception of the Declaration of Independence, everything that took a fixed and legal shape and was destined to be of a permanent nature, was so framed that the view that thirteen sovereign and independent powers, without any obligation on their part so to do, had found it advisable to send delegates to a common congress—a congress which, by virtue of an agreement made, had cognizance of certain matters of interest to the thirteen nations—took deeper roots among the people. The articles of confederation expressly stated that the states had entered into "a firm league of friendship." It was indeed provided at the same time that the compact should be "perpetual;" but what foundation was there for the assumption that this word "perpetual" should receive a more literal construction than the "perpetual" of the numberless alliances, offensive and defensive, of other powers, which all experience had shown to be meaningless phrases, whenever the interest of either party dictated that they should be broken?

There certainly was a foundation for this assumption;

[1] Fisher Ames wrote, as late as 1782: "Instead of feeling as a nation, a state is our country. We look with indifference, often with hatred, fear, and aversion, to the other states." Works, I., p. 113.

but it was not understood at the time, and until it was understood, congress could not be looked upon as the head of the American people, but must remain a foreign power,[1] and a congress of delegates, who received instructions from their sovereigns, and whose enactments could be enforced only to the extent that they met with the approval of these same sovereigns.

The cause which could induce the United States to make their "firm league of friendship" really "perpetual" and gradually more indissoluble and could produce a corresponding weakening of the state governments, was the permanent and ever-increasing interest therein of the people of all the states. This interest, except in so far as securing independence of England was concerned, was entirely ignored. It could come to be understood only through experience. Besides, leaving out of consideration mere wishes and inclinations, the American people were entirely dependent, in this matter, on speculation,[2] and such was the prevailing feeling at the time, that this led naturally to a conclusion the very opposite of that which experience, in the course of time, proved to be the right one.

"The Revolution under which they[3] were gasping for life; the war which was carrying desolation into all their dwellings and mourning into every family, had been kindled by the abuse of power—the power of government. An invincible repugnance to the delegation of power had been generated by the very course of events which had

[1] "It is obvious that the continental government was considered in the light of a foreign one. Indeed, the epithet was applied to it by one of the leaders of the Massachusetts councils. It was submitted to as a matter of necessity, and because such submission was the only practicable way of concentrating the energies of the other states." Austin's Life of Gerry. See Rives, The Life and Times of J. Madison, II., p. 177.

[2] Story, Comm., I., § 244.

[3] The colonists.

rendered it necessary, and the more indispensable it became, the more awakened was the jealousy and the more intense was the distrust by which it was to be circumscribed."[1]

The colonies had for years struggled against the guardianship of the mother country, which had so needlessly oppressed and wronged them, because parliament was not sufficiently conversant with the condition of affairs in America.[2] The consequence was a deep-rooted antipathy to all external power. But congress, as already remarked, was viewed in the light of a foreign power, spite of the fact that it was composed of delegates from the body of the people. Hence the people thought they must see in congress what a people is always apt to expect from a power foreign to the government of the state —unpleasantness, annoyance, and usurpation.

This distrust steadily increased and gradually assumed a different character. The period was big with a peculiarly bold fancy. It recklessly shook off the antiquated prejudices which it had inherited from former generations; but it soon lost the solid ground under its feet and aimed at something far transcending its original object. It received the first rude shock from the pressure of actual unbearable events; but it soon lost itself in wild abstractions and became ridiculous, for it ventured to make a reality of these abstractions and to carve the actual world in every respect in accordance with the rules and measures of logic, as despots have attempted to trim man and the forms of nature in accordance with their own fancy.

It were folly to say that Rousseau's writings exercised any influence on the development of things in America. But the same spirit which gave birth to Rousseau's philosophy and made it of such importance to Europe, was,

[1] J. Q. Adams, Disc. on the Constitution, p. 10.

[2] I refer principally to the stamp acts.

long before Jefferson grew intoxicated even to madness with it in Paris, rampant in America.[1] It, indeed, received its full development here only through the French Revolution, but a series of fortunate circumstances prevented its development to its ultimate consequences. It appeared in the new world in a modified form, but was not wanting there. And here for the first time it became clearly evident that the civilized new world was not separated from the old one by any broad unbridged gulf. They are not only governed by the same historic laws, but the great intellectual revolutions which take place in the one act simultaneously in the other, although, in accordance with the existing natural conditions, they never manifest themselves in precisely the same manner or make their influence felt to exactly the same extent.[2] One only needs to read the Declaration of Independence to be convinced, that but one more impulse was needed, even in America, to permit these crude theories[3] to be openly advocated, which, disregarding that which had prescriptive right on its side, in virtue of its history, would endeavor to sap the foundations of all things, to lay down their arbitrary premises as unquestionable truths, and which would have willingly, in a night, overturned the state and the established order of

[1] See Kapp, Geschichte der Sklaverei, p. 7.

[2] This truth is *a priori* so evident that, to say the least, it would be superfluous to mention it, were it not that Americans frequently fall into the dangerous error, and flatter themselves, that heaven governs them by laws altogether peculiar to themselves and their country. In strange contrast to this is the disposition to overload their political reasoning with analogies, for the most part not pertinent, from Greek and Roman history. The tendency here referred to has already perceptibly decreased. This is to be attributed in part to a clarification of political thought; but in part also to the fact that the majority of members of legislatures and of congress know too little of Greek and Roman history.

[3] Calhoun, with an acuteness very wounding to Americans, calls the declarations of these as universal principles, "glittering generalities."

society, to make them accord with the ideas which they were wont to call "natural rights."

The interchange of the signification of the words privilege and power was the first disastrous confusion of ideas in which the American people were involved by the combined influence of their experience in the struggle with England and the tendency to raise obscure philosophical abstractions to the dignity of political laws.[1] From this confusion of ideas there was but one step to the maxim that no power should be delegated which might be abused; that is, that no power whatever should be delegated, because there is no power which may not be abused.[2] "Congress was to declare everything, but to do nothing."[3] Had there been the slightest idea of what evil effects this must inevitably draw after it, things certainly would not have gone so far. The dread of seeing the power, bestowed in the interest of all, turned against the people was not from the first so great, that a few rational concessions might not have been obtained from envy and mistrust, while the people continued to act under the impulse of excitement and the fear of England's supremacy. But here the American people were, from want of experience, left completely to their own resources. They could judge only from their present feeling and from analogy: and both of these might easily, in the case before us, have misled them.

It was said that government always sought to increase its power at the expense of liberty. But it was complete-

[1] "It was a thing hardly to be expected, that in a popular revolution the minds of men should stop at the happy mean which marks the salutary boundary between power and privilege, and combine the energy of government with the security of private rights. A failure in this delicate and important point is the great source of the inconveniences we experience." Hamilton, in No. XXVI. of the Federalist.

[2] "That power might be abused was [to persons of this opinion] a conclusive argument against its being bestowed." Marshall, Life of Wash., II, p. 127.

[3] Story, Comm., II., § 246.

ly overlooked that this was the case only when power had "attained a certain degree of energy and independence," while it as surely languishes and decays when it does not possess this certain degree of energy and independence.[1] The people therefore lived in the honest conviction that, no matter how little power might be given to congress, it should be the first care of all patriots and friends of liberty to keep a watchful eye upon it and to sound the alarm at the first attempt it should make to exceed its powers. That the time might come when the states or the state governments should not be willing to accede to the equitable demands of congress, made evidently in the interest of all,—such a fear at the beginning of the Revolution would have been readily disposed of as foolish and injurious. De Tocqueville says of American legislators that they rely largely on the intelligence of men; that is, that they leave it to the personal interest of all to live according to the laws.[2] That there is some truth in this assertion, cannot be denied. But at this precise time it was not only the "existing European sentimentality" that was in search of a "Dulcinea, most beautiful of women, in the primeval forests of America, under the names of Nature, Liberty, the Rights of Man, and Humanity."[3]

[1] Madison wrote to Jefferson, October 17, 1788: "It has been remarked that there is a tendency in all governments to an augmentation of power at the expense of liberty. But the remark, as usually understood, does not seem to me well founded. Power, when it has attained a certain degree of energy and independence, goes on generally to farther degrees. But when below that degree, the direct tendency is to farther degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power." Rives, The Life and Times of Madison, II., p. 641. Hamilton gives expression to the same idea. See also Farrar, Manual of the Const, p. 106; Story, Com., I., § 220.

[2] "Les legislateurs americains ne montrent que peu de confiance dans l'honnêteté humaine, mais ils supposent toujours l'homme intelligent. Ils se reposent donc le plus souvent sur l'intérêt personnel pour l'exécution des lois." La Démocratie en Amérique, I., p. 94.

[3] Kapp, Læben des americanischen Generals, Joh. Kalb, p. 242.

Randall was doubtless right when he said that the Americans had not drawn the sword in the defense of "natural rights," but as English subjects, in every sense of the word, to redress the wrongs which they were made to endure by a legitimate but unjust government.[1] But once the sword was drawn, the American people, spite of all the realism and sobriety of their character, began to indulge in these same idealistic, philosophizing reveries; and the more they were in accord, or seemed to be in accord, with the practical wants of the time and with the inclinations produced in individuals by actual events, the more completely did they yield themselves up to their influence. The ingenuous admiration of one's own excellence,[2] which was considered the natural result of democratic institutions, or of the principle that the people are the source or origin of power, now began, but it was some time before it grew, as it eventually did, through the influence of demagogues, into that pharisaical self-righteousness, which is one of the most characteristic traits of the political thought of the masses of the American people. At this time American legislators forgot that self-interest is the best guaranty for the observance of the laws.

True it is, they yet supposed that a rational self-interest would induce both the state governments and individuals to support the reasonable measures of congress and to yield

[1] Randall, Life of Jefferson, I., p. 117. See also the Life and Writings of John Jay, II., p. 410. Edmund Burke writes: "They [the colonists] are therefore not only devoted to liberty, but to liberty according to English ideas, and on English principles. Abstract liberty, like other mere abstractions, is not to be found. Liberty inheres in some sensible object; and every nation has formed to itself some favorite point which, by way of eminence, becomes the criterion of their happiness." Works, II., pp. 38, 39. See also Brownson, The Amer. Rep., pp. 208, 209. Gibbs, Memoirs of the Administrations of Washington and J. Adams, edited from the papers of O. Wolcott, I., pp. 2, 3.

[2] See the Works of Jefferson, I., p. 444; II., pp. 97, 221, 350. Works of Fisher Ames, I., p. 324; II., pp. 347, 359, etc.

to its equitable demands, in case pure patriotism and unselfish republican virtue might not here and there be quite as great and lasting as there was reason to expect. But the foundation on which they built was, consciously or unconsciously to themselves, the highest ethical elements of human nature. These, in their opinion, were destined to be the compass by which, certainly during the great and holy conflict, and probably also in the future, congress, the state governments and individual citizens would with the utmost harmony and unanimity guide the ship of state into the harbor of the golden age which was dawning.[1] They overestimated themselves and the people, and this both as to their intelligence, their moral purity and moral greatness.[2] "We imagined," wrote general Knox, during the troubles in Massachusetts, "that the mildness of the government and the virtue of the people were so correspondent, that we were not as other nations, requiring brutal force to support the laws. But we find that we are men, actual men, possessing all the turbulent passions belonging to that animal, and that we must have a government proper and adequate for him."[3]

[1] "Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, weaknesses and evils incident to society in every shape? Is it not time to awake from the deceitful dream of a golden age, and to adopt as a practical maxim for the direction of our political conduct, that we, as well as the other inhabitants of the globe, are yet remote from the happy empire of perfect wisdom and perfect virtue?" Hamilton in No VI. of the Federalist. See also Life of J. Q. Adams, II., p. 129.

[2] Washington writes, the 8th of August, 1786, to Jay: "We have errors to correct. We have probably had too good an opinion of human nature in forming our confederation. Experience has taught us that men will not adopt and carry into execution measures the best calculated for their own good without the intervention of a coercive power." Washington's Writings, IX., p. 187.

[3] Marshall, Life of Washington, II., p. 118. Fisher Ames says: "Our mistake, and in which we choose to persevere because our vanity

But this self-complacent illusion had cast roots too deep to be eradicated the moment that its evil fruits were beginning to be reaped. The country suffered from this folly so long and to such an extent that the fathers of the republic had often well nigh despaired of its future. True, there were a few who were clear as to the real cause of the evil. Not only the state, but even society, had actually entered on the process of dissolution, and many there were who knew no other way of arresting the evil than by appealing to the influence of Washington. Washington himself saw farther, and pertinently replied: "Influence is not government."[1]

The war could scarcely have been brought to a happy termination, had the mistrust in all strong government, especially in all power external to the state governments, and this fantastic confidence in the virtue of the people been then developed to the extent that it was later. Justice Story says: "They [the colonies] found themselves, after having assembled a general congress for mutual advice and encouragement, compelled by the course of events to clothe that body with sovereign powers in the most irregular and summary manner, and to permit them to assert the general prerogatives of peace and war, without any previous compact, and sanctioned only by the silent acquiescence of the people."[2]

But the same reasons that made such an "irregular and summary" proceeding necessary in the first instance, must

shrinks from the detection, is, that in political affairs, by only determining what men ought to think, we are sure how they will act; and when we know the facts and are assiduous to collect and present the evidence, we dupe ourselves with the expectation that, as there is but one result which wise men can believe, there is but one course of conduct deduced from it, which honest men can approve or pursue. We forget that in framing the judgment every passion is both an advocate and a witness." Works, II., p. 358.

[1] Marshall, Life of Wash., II., p. 120.

[2] Comm., I., § 244.

in the very nature of things have continued to operate to some extent during the whole course of the war. And these causes produced like effects. True, there now existed a formal "contract." But the existence of the republic was of greater importance than the minute observance of the provisions of this contract. When, therefore, an unavoidable conflict between duties arose, congress partly consciously, unconsciously in part, violated the contract.

The interests of the Union came in conflict at every step with the provisions of the compact; for, as we have seen, congress was not possessed, in any sense, of the power necessary to carry out its resolutions. But the situation of the country demanded above all things a single, strong, prompt and energetic executive power. How greatly every operation was hindered by the impotence of congress; what frightful distress its powerlessness produced on every hand, and especially in the army; how often it brought the country to the very verge of the abyss;—to all this Washington's correspondence bears eloquent testimony, which will always redound to his fame as it will to the confusion of the jealous and self-seeking particularism of the state legislatures. But congress was neither willing nor able to exceed its authority except in the most urgent cases. These indeed were not few. The Federalist says: "A list of the cases in which congress have been betrayed, or forced by the defects of the confederation, into violations of their chartered authorities, would not a little surprise those who have paid no attention to the subject."[1] No blame attached to it in most cases, partly, because, as in the case of the ordinance of 1787,[2] it was not seen that it had been guilty of usurpation, and partly because it was tacitly acknowledged that the usurpation was absolutely necessary. The contemptible impotence of congress was too patent to per-

[1] No. XLII.
[2] See the Federalist, No. XXXVIII.

mit the people to declaim with any great vehemence against an occasional act of trespass on its part.

Hence there was obviously no necessity for the general cry against the dangers which might attend too powerful a government and a "consolidation" of the Union. And yet these were still harped upon on every occasion, and not merely from impure personal motives, but in great part also from full and honest conviction. The more insufficient the powers of government were proved to be, the stronger was the opposition to any extension of them. The disinclination to trust congress with power at all in keeping with its duties, became at last so great that it began to show itself even in the debates in congress.[1]

These views, however, were not carried to an extreme during the war. The governmental machinery of the confederation was as clumsy and imperfect as it could well be. It not unfrequently seemed as if it would cease working altogether. But at every critical moment it received a new impulse.[2] As long as the war had not yet been happily terminated, there stood out in bold relief a definite object which made the Union absolutely necessary; for even the most zealous visionary recognized that independence could be obtained only by united effort.[3] But the moment all

[1] Story, Comm., I., § 264.

[2] "The necessary unanimity of action and opinion was preserved by the individual influence of the great men who appeared together in the different colonies." Trescot, The Diplomatic History of the Administration of Washington and Adams, p. 10. G. W. Greene is a decided advocate of the same view. See the Life of Nath. Greene, passim.

[3] J. Jay wrote on the 27th of June, 1786, to Washington: "I am uneasy and apprehensive, more so than during the war. Then we had a fixed object, and though the means and time of obtaining it were often problematical, yet I did firmly believe that we should ultimately succeed, because I did firmly believe that justice was with us." Marshall, Life of Wash., II., p. 107. Trescot, l. c., p. 9, says, and doubtless rightly: "For it must not be supposed that the treaty of peace secured the national life. Indeed, it would be more correct to say, that the most critical period of the country's history embraced the time between 1783 and

external pressure was removed,[1] the crazy structure began to fall to pieces with a rapidity which astonished even those who had had during the struggle the best opportunity to learn its weaknesses.

If the states were at first satisfied with simply ignoring the requisitions of congress, or of complying with them just as far as seemed good to them, they now began to scoff at its impotence and to boast of their neglect of duty.[2]

The demoralizing influences which every protracted war produces began now to manifest themselves to an alarming extent. Impure motives of every description governed the action of the legislatures, and this evil became gradually more frequent and less disguised. Even during the war the most distinguished men gradually left congress, because they found in their several states a field of action in which they could accomplish more, and one in most instances much more congenial to their tastes.[3] Now they either sought to retire entirely to private life, or they were condemned to see their influence in the legislatures gradually wane. Less remarkable men, who knew little of the meaning of the real patriotism which had actuated the leaders of the Revolution, by degrees assumed command of the helm. Confidence in the virtue of the people and denunciation of the slightest attempts to strengthen the power of the confederacy were the masks behind which the most egotistic ends were concealed. But it was soon

the adoption of the constitution of 1788." See also Story, Comm., I., § 249.

[1] Story, Comm., I., § 254.

[2] Washington writes to Jay: "Requisitions are actually little better than a jest or a by-word throughout the land. If you tell the legislatures they have violated the treaty of peace and invaded the prerogatives of the confederacy, they will laugh in your face." Marshall, Life of Wash., II., p. 108. Justice Story also says: "The requisitions of congress were openly derided."

[3] Trescot, Dipl. Hist., p. 12.

considered scarcely worth while to make use of any mask, no matter how transparent. The acquisitions of the war were looked upon as so much booty, of which each state endeavored to secure the lion's share, without the least regard for the well-being or honor of the whole. In several instances, those who were willing to sell even the honor of their own state showed a bolder front and grew noisier in the hope of increasing their own personal share of the booty and of seeing it turned as soon as possible into jingling gold.[1]

Congress was destitute of even the necessary pecuniary means of meeting its most urgent obligations.[2] The English forces were still in New York when congress was compelled, by a handful of mutinous recruits, to remove from Philadelphia to Princeton, because it was not able to keep the repeated promises it had made to the troops. It was due to Washington's influence alone that the whole army did not refuse to lay down their arms and dissolve, until justice was done them. The distress grew greater every year, and threatened daily to induce more serious complications. The foreign debt was maturing, and congress was unable to meet the interest upon it, to say nothing of the payment of the principal. All efforts to prevail on the states to guarantee the general government a secure and adequate source of income were without effect. They

[1] "Public faith and public force were equally out of the question, for as it respected either authority or resources, the corporation of a college or a missionary society were greater potentates than congress. Our federal government had not merely fallen into imbecility and of course into contempt, but the oligarchical factions in the large states had actually made great advances in the usurpation of its powers. The king of New York levied imposts on Jersey and Connecticut; and the nobles of Virginia bore with impatience their tributary dependence on Baltimore and Philadelphia." Fisher Ames, Works, II., p. 370.

[2] "The government of a great nation had barely revenue enough to buy stationery for its clerks or to pay the salary of the doorkeeper." Fisher Ames, l. c.

held fast to the policy of requisitions, and even considered it a favor when they paid the least attention to such as were made upon them.[1] The evidences of indebtedness of the home loan sank, in consequence, to about one-tenth of their nominal value.[2]

The pecuniary condition of the individual states was still worse, for here there was not only no possibility of payment, but the disposition to pay became weaker every day. And even when existing legislatures could be reproached with nothing on this score, it was so uncertain what might be expected from future ones that the state scrip could be negotiated only at an oppressive premium. And this became continually worse; for the number of those who aimed at liquidating their debts by a dishonorable exercise of the legislative power constantly increased,[3] and in many of the states it became more uncertain every day whether they would not find a majority in the legislature.

"Public confidence was shaken to such an extent in consequence, that even private individuals of undoubted credit were obliged to pay a discount of from thirty to fifty per

[1] Hamilton remarked in February, 1787, in the New York legislature, that in the preceding five years New Hampshire, North Carolina, South Carolina, and Georgia had contributed nothing; Connecticut and Delaware about a third of their levy; Massachusetts, Rhode Island, and Maryland about one-half; Viginia, three-fifths; Pennsylvania, almost her entire quota; and New York more than her quota. But it was New York's headstrong opposition that defeated the effort made to give congress, for twenty-five years, the right to levy a tax of five per cent. on all spirituous liquors and some other articles, and to increase the tax on all other imported goods. Marshall says in relation to this: "New York had given her final veto to the impost system, and in doing so had virtually decreed the dissolution of the existing government." Life of Wash., II., p. 123.

[2] It should not be forgotten, however, that congress had, some years before, fixed the relation of the continental paper money to specie at 40:1. See an interesting account of the depreciation of the continental money in 1779 and 1780 in Kapp's Leben Kalb's, pp. 169, 170.

[3] Life of J. Adams, II., p. 131.

cent. on their notes." Business was completely prostrated. "There was no market, especially for real estate, and sales for cash could be made, when at all, only at a great sacrifice." A sullen resignation began to take possession of the public mind. People despaired of bringing about a better state of things through economy and labor. Wild fancies in the garb of radical reform theories, tending to the overthrow of all law and order, gradually usurped the place of the sober business habits which at all other periods have distinguished the American people.

Under such circumstances, it can excite no surprise that the exclusive and particularistic tendencies of the time began to assume a coarser form of development When the confidence of man in man was undermined, and the sense of justice of whole classes of society so dimmed that they openly sought to escape their own embarrassments by the violent ruin of their neighbors, it could not be expected that the policy of the states in their relation with one another should be guided by healthy politico-economical ideas, by great unselfishness, or by high moral principle. Each state had the exclusive right to regulate its commerce, and each state, most ungenerously and most selfishly, availed itself, to the utmost limit, of this right. In the regulation of commerce, regard was had only to self interest, and a policy was frequently followed, the aim of which was to obtain an advantage directly opposed to the welfare of the neighboring states. This gave occasion to continual vexations and petty jealousies. The number and magnitude of real and imagined grievances grew on every side, so that the mutual prejudices of the states shot deeper roots and their animosity became yet more embittered, while as a consequence the ruin of their commerce was completed.

The reaction which this internal dissension had on the relations of the Union to the European powers was very perceptible. The political emancipation of the United

States was established by the war; their economic emancipation was only a formal one. In this respect they remained, for a great many years more, in colonial dependence. The only essential change made in the situation served merely to confirm anew Franklin's saying, that "not England, but Europe" was the mother country of America. The advantage, however, which might have been reaped from this change was scarcely turned to account. The United States had of course the right to enter into commercial relations with such of the European powers as might offer them the best terms; but this right was destined to remain completely unproductive of profit as long as these powers did not consider it their interest to enter into commercial treaties with them. And as, by reason of the powerlessness of congress and the little reliance that could be placed on the state legislatures, there could be no guaranty that the terms of any treaty would be observed, trans-Atlantic nations were little inclined to bind themselves to anything.[1] England had already experienced how little reliance was to be placed on the promises of congress. The terms of the treaty of peace were frequently violated by the Americans, as Jay, the then secretary of foreign affairs, frankly avowed. But they were satisfied with making this avowal, for the urgent recommendations of congress to

[1] The Duke of Dorset writes on the 26th of March, 1785, to the American commissioners who were endeavoring to negotiate a treaty of commerce: " . . . I have been . . . instructed to learn from you, gentlemen, what is the real nature of the powers with which you are invested, whether you are merely commissioned by congress, or whether you have received separate powers from the respective states. . . . The apparent determination of the respective states to regulate their own separate interests renders it absolutely necessary, towards forming a permanent system of commerce, that my court should be informed how far the commissioners can be duly authorized to enter into any engagements with Great Britain, which it may not be in the power of any one of the states to render totally useless and inefficient." Diplomatic Correspondence, 1783-1789, II., p. 297. Compare Marshall, Life of Wash., II., pp., 96, 97. Pitkin, History of the U. S., II., pp. 189, 190.

the states to henceforth make the observance of the treaty an object of their earnest solicitude, were words spoken to the wind. England, therefore, thought herself justified in not performing her part of the contract. She refused to vacate the western posts; and the Indians, under the protection of her troops, and partly because urged to it by England, carried on an atrocious border warfare against American settlers.[1]

The complaints consequent upon the distress and misery growing out of this lamentable absence of government continued to become louder and more general. Congress had to use all its remaining resources and energy in order to meet the daily demands upon it. Complete ruin had been once avoided only because Holland happened to be in a condition to make another small loan. But this could afford a respite of only a few months more.

Colonel Humphries wrote to Washington that the wheels of the political machine could with difficulty continue to move. And, indeed, a short time after they came to "an awful stand."[2] The United States, which had already

[1] Most American writers consider it a settled fact that England was the first to break the terms of the treaty. It must be granted, also, that Jefferson could claim with a certain degree of truth, in his communication of the 29th of May, 1792, to the English ambassador, Hammond, that congress was bound only to recommend the states to deport themselves towards their English creditors and towards the loyalists in the manner desired by England. But the absolute want of power of the government of the Union had given so good a pretext to England to fail in its engagements, and congress was so directly compelled to acknowledge its powerlessness over the "sovereign" states, that neither England nor any other country would be likely to be induced to undertake any new engagement and receive as an equivalent new recommendations of congress to the states.

[2] "The delinquencies of the states have, step by step, matured themselves to an extreme which has at length arrested all the wheels of the national government and brought them to an awful stand. Congress at this time scarcely possesses the means of keeping up the forms of administration till the states can have time to agree upon a more substantial substitute for the present shadow of a federal government." Federalist, No. XV.

dreamed themselves to be the redeemers of the world from political slavery, were, both at home and abroad, an object of compassion, of scorn and contempt.[1] This was known to all; no one ventured to deny it; but the legislatures remained obdurate. They have a fatal disinclination to despoil themselves of the smallest attribute of independent or sovereign states, wrote Colonel Humphries, in substance, to Washington on the 20th of January, 1787. It was necessary that their own existence should be in jeopardy, before they would even reluctantly acknowledge that there was no salvation for them except in strengthening the government of the Union.

In Massachusetts were witnessed the first commotions which showed beyond a doubt that society itself was already completely undermined, and that a radical political reform and the preservation of social order were well-nigh identical questions. The malcontents who either openly or secretly sided with Shays were equal in number to the friends of the state government, and their ultimate object was none other than the repudiation of public and private debts and a re-distribution of property.[2] The greatest evil of all was that it was long doubtful whether the legislature would rouse itself to energetic action, or whether that part of it which was in secret sympathy with the rebels would obtain the upper hand.

The news of the outbreak of these disorders created a very profound impression everywhere. The old leaders of the Revolution felt that the time had at last come when the question of the "to be" or the "not to be" of the nation must be decided. The spectre of civil war rose up

[1] Washington writes to Colonel Lee: "To be more exposed in the eyes of the world and more contemptible than we already are, is hardly possible." See also Works of Jefferson, I., pp. 509, 518, 532; II., pp. 193, 194.

[2] Compare Curtis, Hist. of the Const., I., p. 269; Sparks, Wash., IX., p. 207; Marshall, Wash., II., p. 107; Rives, Madison, II., p. 175.

in a threatening attitude before every eye.[1] Colonel Humphries implored Washington not to remain neutral if it should break out. And Washington himself was far from considering these fears as mere phantoms. He wrote to General Knox: "There are combustibles in every state to which a spark might set fire."[2] And this was the view that obtained everywhere. "It is, indeed, difficult to overcharge any picture of the gloom and apprehensions which then pervaded the public councils as well as the private meditations of the ablest men of the country."[3]

[1] "Our discontents were fermenting into civil war." Fisher Ames, Works, II., p. 370.

[2] Marshall, Life of Wash., II., p. 119.

[3] Story, Comm., I., § 271. A certain Smith, who said of himself: "I am a plain man and get my living by the plow," described the rebellion in the following words, in the Massachusetts convention: "There was a black cloud that arose in the East last winter, and spread over the West. . . . . I mean, sir, the county of Bristol; the cloud rose there, and burst upon us, and produced a dreadful effect. It brought on a state of anarchy, and that led to tyranny. I say it brought anarchy. People that used to live peaceably and were before good neighbors, got distracted and took up arms against government. . . . I am going, Mr. President, to show you and my brother farmers what were the effects of anarchy, that you may see the reasons why I wish for good government. People, I say, took up arms; and then if you went to speak to them, you had the musket of death presented to your breast. They would rob you of your property, threaten to burn your houses; oblige you to be on your guard night and day; alarm spread from town to town; families were broken up; the tender mother would cry: 'Oh, my son is among them, what shall I do for my child?' Some were taken captive; children taken out of their schools and carried away. Then we should hear of an action, and the poor prisoners were set in front to be killed by their own friends. How dreadful, how distressing, was this! Our distress was so great that we should have been glad to snatch at anything that looked like a government. Had any one that was able to protect us come and set up his standard, we should all have flocked to it, even if it had been a monarch, and that monarch might have proved a tyrant. So that you see that anarchy leads to tyranny; and better to have one tyrant than so many at once." Elliott, Deb., II., pp. 102, 103. Jameson, The Constitutional Convention, p. 41, says: "If they did not desire, within the borders of each state, to see a repetition of the rebel-

It was owing to this general feeling that a desperate crisis had been reached, that the report of the convention at Annapolis did not fall on deaf ears. This convention met in September, 1786, at the invitation of the legislature of Virginia, "to consider how far a uniform system in their commercial relations" might "be necessary to their common interests." But as only five states[1] were represented, and the commissioners were soon satisfied that their powers were not such as the critical condition of the country demanded, they contented themselves with drawing up a report which was laid before congress and the legislatures of the several states. The commissioners therein recommended the calling of a general convention "to meet at Philadelphia, on the second day in May next, to take into consideration the situation of the United States; to devise such further provisions as shall to them seem necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in congress assembled, as, when agreed to by them, and afterwards confirmed by the legislatures of every state, will effectually provide for the same."

This report induced New York to instruct its delegates to make a formal proposition that congress should recommend to the states the calling of a general convention.[2] On the 21st of February, 1787, this proposition was accepted and the recommendation made which had been advised by the Annapolis convention.

The supporters of a strong government now acted with

lion kindled by Shay in Massachusetts, ending, perhaps, in a general civil war, they must substitute for the rotten structure of the confederation a constitution which would confirm, and not undermine and break up, their actual union." See Life of J. Adams, II., p. 131.

[1] New York, New Jersey, Pennsylvania, Delaware and Virginia.

[2] The proposition referred to received a majority of only one vote in the New York senate. Marshall, Life of Wash., II., p. 123.

redoubled energy, for it was necessary not only to induce all the legislatures to send representatives to the convention, but to cause the choice of delegates to fall upon the most distinguished men in the country, that their very names might suffice to keep the party of anarchy within bounds.

In the first place, it was necessary to secure Washington; for he held a place in the hearts of the people, such as no other of his great co-laborers in the work of independence occupied, and such as no other can occupy again. To seek in Washington's breast any thought but that of the welfare of his country would have been, at the time, a species of high treason and an unpardonable offense against faith in human nature. It was reserved for the demagogues of the succeeding decade to defile even his name with the most disgusting drivel. Washington yet invested everything he touched with a kind of sacredness. If Washington was wanting, the best man, the people's man, was wanting also; but on the other hand, if even his co-operation turned out to be fruitless, the best card in the game was played in vain, and the game itself must be given up as lost. Washington knew this, as did also all those who understood the significance of the moment. It is therefore necessary to a correct understanding of the condition of affairs to remember that Washington at first absolutely declined the nomination, and accepted it at last, although in so doing he was compelled not only to do the greatest violence to his personal wishes, but to disregard the counsel which came to him from persons whose advice was worth considering and which was based on important political grounds. Colonel Humphries and general Knox strenuously opposed it, because they feared, as they said, that things must grow worse before they could grow better. Washington would doubtless have followed their advice were he not fully convinced, after mature consideration,

that this was indeed "the last dying essay"[1] to make the continued existence of the Union possible.[2]

The delegates began to meet at Philadelphia on the appointed day; but it was the 25th of May before a majority of the states were represented. But although there reigned here again the careless spirit which prevailed as to all matters pertaining to the government of the confederation, it must not be inferred therefrom that the impending transactions were looked upon with indifference.

One needs only to read the list of names of the delegates, to be convinced that people everywhere were penetrated with the gravity of the occasion and the times. If there was any exit from the labyrinth of conflicting interests and views, this meeting must certainly find it; for it was unquestionably made up of the best men in the Union, of the most experienced, patriotic and intelligent.

The effect on the one hand was to inspire courage and hope in the breasts of even the most disheartened, but on the other, this very circumstance served painfully to intensify the alarming doubts for the country's future; for if this convention should dissolve without having accomplished any result, it seemed as if nothing remained but to face the approaching chaos with the gloom of resignation.[3] It was fortunate that this feeling was strongest among the members of the convention; for it caused them to realize the immense responsibility which weighed upon their shoulders and brought it home to their consciousness with such force, that a majority of them saw clearly that their only alternative was mutual concession or general ruin.[4]

[1] See the letter in Marshall, Life of Wash., II., p. 114.

[2] "The idea of dismemberment had recently made its appearance in the newspapers." Madison's Introduction to the Debates in the Federal Convention of 1787, Elliott, V., p. 120.

[3] See Elliott, Deb., V., pp. 553, 557.

[4] Mason gave strong expression to this conviction on the 5th of July: "It could not be more inconvenient for any gentleman to remain absent

It was resolved, therefore, that its transactions should be carried on with closed doors and that the delegates should be required to preserve the strictest silence concerning what transpired, in order that the questions in controversy might not be dragged immediately before the forum of an excited and angry people and all prospect of an understanding thus destroyed from the very beginning. This resolution was soon justified by the course which the proceedings took.

It was plain from the first days of the convention that a goodly number of the delegates—and among them many of the most distinguished men—would not limit themselves to a literal interpretation of their powers. Their instructions authorized them only to propose amendments to the existing articles of confederation; but they were satisfied that all such attempts could, at most, only postpone the day of ruin and that the source of the evil could be destroyed only by giving the constitution a national basis.

Well grounded as these convictions might be, justified as the representatives were in not hesitating in their choice between exceeding their powers and the salvation of their country, the people's veto would doubtless have frustrated their designs, if at that moment an opportunity had been afforded to demagogues and the honest advocates of particularism to denounce them. When the constitution was afterwards proposed to the people for adoption, the decision hung upon a single hair. There can be no question to which side the balance would have inclined if the calm arguments of Dickinson and Luther Martin's fiery declamation had reached the public ear at a time when the outline of the constitution was not yet complete and the only al-

from his private affairs; but he would bury his bones in this city rather than expose his country to the consequences of a dissolution of the convention without anything being done." Elliott, Deb., V., p. 287. See also Ibid, V., p. 552.

ternative did not yet lie between its unconditional acceptance and total rejection; but as the convention was yet in session and so greatly divided, the worst was to be feared at any moment. Two of the three New York delegates, Lansing and Yates, left the convention while it was in the midst of its labors and declared that their constituents would never have sent delegates there, if they had dreamed that any such projects were on foot.[1] And it repeatedly seemed as if half of the deputies would follow their example, and the convention dissolve without having accomplished its task. On two of the most important questions the views of the delegates were diametrically opposed and it was apparently impossible to mediate between them. Complete helplessness threatened them, for every attempt at compromise served only to make the gap between them wider; and the supporters of the opposing views were always forced by the discussion into yet more extreme positions, so that at last the signs of personal bitterness began to show themselves.

When finally, every prospect of an understanding seemed to have disappeared, the white-haired Franklin arose and proposed that henceforth the sessions should be opened with prayer, for now there was no hope of help except from heaven; the wit of man was exhausted![2] The hope of ultimate success must have been small, indeed, when such a proposition could be made by Franklin, strongly inclined as he was to rationalism, a man who at heart was averse to all religious demonstration and who, even in the darkest hours of the war, had carried his head very high.

[1] Lansing declared on the 16th of June: "Had the legislature of the state of New York apprehended that their powers would have been construed to extend to the formation of a national government, to the extinguishment of their independency, no delegates would have appeared here on the part of that state." Yates's Minutes, Elliott, Deb., I., p. 141. See also letter from the Hon. Rob. Yates and the Hon. John Lansing, Jun., to the governor of New York. Elliott, Deb., I., p. 480

[2] Elliott, Deb., V., p. 254.

Pinckney, with passionate emphasis, declared that South Carolina would never accept a constitution which did not afford proper protection to the interests of the slaveholders;[1] and Gouverneur Morris, speaking of the demand of the smaller states to have equal representation in congress, exclaimed in a prophetic spirit: "This country must be united. If persuasion does not unite it, the sword will."[2] The probable solution of these two controverted questions seemed, through long weary weeks, to be given in the ominous words of Gerry: "A secession would take place . . . for some gentlemen seemed decided upon it."[3] At last, Edmund Randolph, who had been one of the most decided advocates of a thorough reform of the constitution in the national sense, refused to sign the one which had been drafted, because its adoption "would end in tyranny."[4]

Nearly four months elapsed before the delegates could agree upon a plan, of which they said to themselves, with Hamilton, that it was not possible to hesitate between the prospect of seeing good come from it and anarchy and convulsion. On the 17th of September it was unanimously resolved that the plan should be adopted by the states represented at the time, which was done. When the last delegates were signing their names to the document, Franklin remarked that he had frequently asked himself in the course of the proceedings whether the sun pictured on the back of the president's chair was an ascending or declining one; but now he had the satisfaction of knowing that it was a rising, not a setting, sun.

This conviction proved ultimately to be correct; but for the moment a firm confidence that success was certain

[1] Elliott, Deb., V., p. 457.
[2] Ibid, V., p. 276.
[3] Ibid, V., p. 278.
[4] Ibid, V., pp. 434, 491, 502, 552, 556. See also Edmund Randolph's Letter to the Speaker of the House of Delegates, Virginia, Ibid, I., pp 482–491.

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bordered almost on temerity. Much was indeed gained when the convention, with something approaching unanimity, could recommend the proposed constitution to the people; but there yet remained difficulties to be overcome equal at least to those which the convention had surmounted.

The convention had, it is true,—unlike the articles of confederation, which on all the more important questions demanded unanimity,—declared that the consent of nine states should give force to the new constitution, so far as these nine states were concerned; but it was extremely doubtful whether even this number could be won over to it. In the convention itself, and up to the very last moment, it had been impossible to effect a reconciliation of the opposing views. Franklin had purposely given his motion an ambiguous meaning, in order that the final ballot might have the semblance of entire harmony. This might, for the first moment, have the advantage of making a good impression upon the people. The next instant, however, every one must have known that Mason, Randolph, Gerry, and others had decidedly opposed the project and refused it their signature; and then the ruse might have an effect directly opposed to that which Franklin had contemplated. There could be no doubt that the dissenting delegates would endeavor to justify themselves before the public and seek to win public opinion in their favor. Besides, the little phalanx on whom the weight of the battle with the prejudices of the people and with theorizing fanatics and demagogues was to rest, was hopelessly divided. The best names were, it is true, subscribed to the constitution; but there was a goodly number of names which were not there and which stood second only to the best. The consequence was that the prestige which would have been gained for the proposed constitution by actual unanimity, was lost. The success of its advocates in the several states depended mainly on

the grounds which could be advanced in its favor; but the disinclination to follow the exposition and development of these grounds attentively and calmly and to weigh the arguments for it against the actual state of affairs, was greater than even the most pusillanimous had feared.[1]

The reason of this was not a change for the better in the situation which had occurred in the meantime. Nothing, indeed, had happened to make internal discord and distress greater than they had been or to demonstrate how well justified was the vexatious and suspicious contempt with which European powers regarded the republic. Everything remained very nearly in *statu quo*. But this very fact caused a radical change in the constitution to appear so urgent, that the one proposed met with ardent support at the eleventh hour from parties whom one might have expected to see in the front rank of its opponents. For instance, Randolph, who could not be induced on any account to subscribe to it in Philadelphia, was one of its most powerful defendants in the Virginia convention, although even there he frankly and energetically gave expression to his objections to it.[2]

The mass of the particularists combined to wage a most acrimonious opposition, the moment the proposed constitu-

[1] The reproof given by Lee, of Westmoreland, to Patrick Henry, and the warning he addressed him, might have applied equally to all the speeches of the Anti-Federalists; "Instead of proceeding to investigate the merits of the new plan of government, the worthy character informed us of horrors which he felt, of apprehensions to his mind, which made him tremblingly fearful of the fate of the commonwealth. Mr. Chairman, was it proper to appeal to the fears of this house? The question before us belongs to the judgment of this house. I trust he is come to judge and not to alarm." Elliott, Deb., III., p. 42.

[2] "As with me the only question has ever been between previous and subsequent amendments [to the constitution], so I will express my apprehensions that the postponement of this convention to so late a day has extinguished the probability of the former without inevitable ruin to the Union, and the Union is the anchor of our political salvation." Elliott, Deb., III., p. 25.

tion was made public. All moderation, we might almost say all reason, seemed to forsake them the instant they saw that the strengthening of the central government and the proportionate consolidation of the states were no longer a theme of stimulating discussion, but that the machinery was already at work to effect the one and the other. The most fanatical assumed the lead; men for whom no weapon was too blunt or brutal so long as they could use it. Their arguments bordered on the extremest absurdity and their assumptions might have excited the loudest merriment, were it not that the question was one of life or death to the nation. All the bitter experience of the war, and all that followed on its close, was denied and ridiculed as an idle phantom. Out of the proposed constitution, on the other hand, its most harmless provisions not excepted, the same phantom was conjured up day after day; a vague, indefinable something, to which a name understood by everybody was applied, that of "consolidated government," which meant something horrible and to which all that had hitherto been dear to Americans must fall a prey. The same Patrick Henry who, at the outbreak of the Revolution, declared with so much emphasis that he was no longer a Virginian, but an American, asserted now with equal emphasis that under the articles of confederation the people had enjoyed the greatest amount of security and contentment, and that by the resolution to alter the constitution this happy state of affairs had been disturbed and the continuance of the union endangered.[1]

[1] "I consider myself as the servant of the people of this commonwealth, as a sentinel over their rights, liberty and happiness. I represent their feelings when I say that they are exceedingly uneasy at being brought from that state of full security, which they enjoyed, to the present delusive appearance of things. A year ago, the minds of our citizens were at perfect repose. Before the meeting of the late federal convention at Philadelphia, a general peace and universal tranquillity prevailed in this country, but since that period they are exceedingly uneasy and disqui-

To obtain a victory over such opponents, was no easy matter. In several of the states, and in the most important, the particularists constituted a majority in the conventions which eventually had to decide on the adoption or rejection of the constitution. The prospects of the Federalists were, therefore, gloomy in the highest degree. It is impossible, in fact, to discover more than one reason why the latter did not in these states, immediately after the results of the elections were known or after the first debates on the subject, give up all further struggle as useless. The nature of their weapons was not such as to inspire them with the hope of overcoming the opposing majority. They fought with the understanding and the negative results of experience. Under ordinary circumstances, these are certainly the strongest of all weapons. But the edge was taken off them here, for the particularists had not come to weigh, to examine and to judge, but to declaim and spread alarm.[1] There was no desire to be governed by the dictates

eted. When I wished for an appointment of this convention, my mind was extremely agitated for the situation of public affairs. I conceived the republic to be in extreme danger. If our situation be thus uneasy, whence has arisen this federal jeopardy? It arises from this fatal system; it arises from a proposal to change our government—a proposal that goes to the utter annihilation of the most solemn engagements of the states—a proposal of establishing nine states into a confederacy, to the eventual exclusion of four states. It goes to the annihilation of those solemn treaties we have formed with other nations." Elliott, Deb., III., p. 21. Pendleton sharply replied: "If the public mind was then [before the meeting of the federal convention] at ease, it did not result from a conviction of being in a happy and easy situation; it must have been an inactive, unaccountable stupor." Ibid., III., p. 36.

[1] One instance will illustrate the degree of insipidity which declamation had reached at the time. In the Massachusetts convention a certain Nason thus gave vent to his feelings: "And here, sir, I beg the indulgence of this honorable body to permit me to make an apostrophe to liberty. O Liberty! thou greatest good! thou fairest property! with thee I wish to live, with thee I wish to die! Pardon me if I drop a tear on the peril to which she is exposed; I cannot, sir, see the brightest of jewels tarnished—a jewel worth ten thousand worlds; and shall we part with it so soon? Oh, no!" Elliott, Deb., II., p. 133.

of reason, no desire to learn from experience at the expense of the complete sovereignty of the states and of the theories which people had become accustomed to invest with the character of unimpeachable dogmas.

This assertion seems to be in conflict with the fact that the constitution was finally adopted, although in several of the conventions the particularists were in a majority. But the question was not one of will: necessity it was that decided it. It was this which prevented the Federalists from ever losing courage entirely, and which ultimately won over a sufficient number of the opposing majority. Madison and several other members of the Virginia convention say repeatedly, in their letters, that they were in the minority and they complain yet more frequently that the majority would not be persuaded. And yet they constantly returned to the attack, because they were rightly[1] convinced that necessity would in the end compel even Patrick Henry to acknowledge that some change in the constitution was inevitable. But when this much was gained, it was to be expected that at least some of the particularists would further agree that, at that moment, there was no alternative but to renounce the idea of making any change whatever and leave things to take care of themselves, or to accept this constitution unconditionally, good or bad as it might be.

This calculation of the Federalists turned out, on the whole, to be right. Rhode Island, indeed, refused to call a convention, and the convention of North Carolina dissolved without giving its assent to the constitution,[2] al-

[1] Elliott, Deb., III., p. 399 and passim.

[2] By 184 to 84 votes. Elliott, Deb., IV., p. 251. The constitution was not adopted by North Carolina until the end of 1789, or by Rhode Island until the middle of 1790. As an interesting instance of the length to which American political doctrinarians of the period extending from the time of the Missouri compromise to the outbreak of the civil war, have gone, we may quote the assertion of Brownson (The American Rep., p. 288): "Hence, if nine states had ratified the constitution, and the other four had stood out and refused to do it, which was within their

though it had already been adopted by ten states, and the confederation was in the meantime dissolved. In Massachusetts, Virginia and New York, however, the reasons adduced above decided the issue in favor of the Federalists, spite of the fact that the scales wavered to the very last.[1] The struggle was severest in New York.[2] But fortunately for the Federalist party, it had here its most distinguished advocate, Alexander Hamilton.[3] For a time, however, it seemed as if the obstinacy of the anti-Federalists would bid defiance to everything. Even when the news came that the ninth state had ratified the constitution and that the confederation was therefore dead, Smith and Lansing declared that their counsels should by no means be influenced by that fact.[4] They felt that on account of the geographical situation of the state, it was scarcely less im-

competency, they would not have been independent sovereign states, outside of the Union, but territories under the Union." The facts that the resolution of the convention made the constitution binding only on those states that would ratify it, and that it never occurred to any one to look upon North Carolina and Rhode Island as territories until they should adopt the constitution, are of no consequence to him. The proposition seems to him a logical conclusion of his general theory of the relations of the states to the Union, and that is sufficient for him.

[1] The constitution was adopted in Massachusetts by 187 against 168 votes, in Virginia by 89 against 79, and in New York by 30 against 27.

[2] When Hamilton was asked what the probable decision of the convention would be, he answered: "God only knows: several votes have been taken by which it appears that there are two to one against it [the constitution]." After a pause he added: "Tell them the convention shall never rise until the constitution is adopted." J. C. Hamilton, Hist. of the American Republic, III., pp. 522, 523. This work should be read with great caution; but there is no internal evidence in the case before us against the authenticity of this anecdote.

[3] Jefferson, Hamilton's most determined opponent, bears him this testimony: "Hamilton is really a colossus to the anti-Republican party; without numbers he is a host in himself. In truth when he comes forward there is nobody but yourself [Madison] that can meet him." Van Buren, Political Parties, p. 124.

[4] Elliott, Deb., II., pp. 324, 325.

portant to the Union that New York should be a part of it than it was to New York that she should be a part of the Union. This redoubled their efforts to push the opposition to the extreme.[1] The territory of the Union would be divided into two unequal parts without any geographical connection, unless New York became a part of it. And the broad, as yet unsettled, land behind it, reaching to the St. Lawrence and to the shores of Lake Ontario and Lake Erie, as well as the great commercial artery of the Hudson, inspired the state with a confidence in its importance and its strength—elements of power in the great future as well as in the present. True, people were always somewhat afraid of a disruption of the Union, it mattered not how loud the rodomontades that freedom should be sacrificed at no price. But they considered themselves in duty bound to annex their own conditions to their concurrence, and imagined for a long time that they would be not only justified in forcing them upon the Union, but that they would have the power to do so.

The idea of calling another general convention was much discussed, both in the Philadelphia convention and later in all the states. But even the more thoughtful particularists did not attempt to bring this about, as it was plain what effect such a step would produce. As all the more important provisions of the constitution had been attacked in the Philadelphia convention, and from the most opposite points of view, it was certain that the same would have been the case, though to a greater extent, in a general convention, as it was now in the conventions of the several states. The confusion would have been far worse, and the discouraging feeling that the convention had proposed to itself an impossible task in the highest sense of the word, would soon have absorbed all minds, because the constituents of every fraction would have expected or de-

[1] Elliott, Deb., II., p. 211.

manded the complete adoption of their own views and principles.[1] The only effect would have been to increase the evil which they were seeking to remove, perhaps to render it incurable by familiarizing themselves gradually with the thought that it was incurable.

These truths were so obvious that the idea of a second general convention was soon surrendered, and, as already mentioned, another means of escape proposed. In Virginia the particularists had already declared themselves ready to accept the constitution, provided certain amendments to it were adopted beforehand. This had called forth a very exhaustive debate. As the Federalists incontrovertibly proved, nothing would have been gained thereby, so that a rejection of the constitution was, under such circumstances, to be preferred to its adoption.[2] In New York the same views obtained. The proposition was altered, and it was provided that the constitution should be ratified with the reservation that, in case the other states could not afterwards be won over to the amendments to be proposed, those which had approved it might leave the Union. It seemed that this was as far as the particularists could be induced to go. Hamilton's powers were almost exhausted. In a moment of despondency he wrote to Madison and asked him whether, at last, it was not best they should agree to the hard conditions. Madison answered that such a ratification would, in reality, not make New York a member of the Union, and that the state therefore could not be admitted on such conditions.[3]

[1] South Carolina proposed 5 amendments to the constitution, Massachusetts 9, New Hampshire 12, Virginia 20, Rhode Island 21, North Carolina 26, New York 33. Madison to Stevenson, Nov. 27, 1830. Elliott, Deb., IV., p. 614. These figures show what a second general convention might have expected. See also Washington's Writings, IX., p. 319.

[2] Elliott, Deb., III., pp. 25, 33, 93, 174, 194, 303, 304, 587, 591, 627-629, 630, 632, 643, 647, 649.

[3] "I am sorry that your situation obliges you to listen to propositions

Hamilton then bestirred himself once more, and returned to the conflict resolved to be satisfied with nothing short of a complete victory. He recognized even more than Madison the whole significance of a conditional ratification. The constitution would have lost thereby the character of a fundamental law under which the states placed themselves. But the leading idea of the Federalists in Philadelphia had been to make a binding law. To yield to the demands of the particularists would have been to concede that they considered the constitution a mere protocol, an agreement dependent upon certain definite conditions. This confession involved a principle by which the particularists could demonstrate at any time that they had the right to dissolve the contract, if those things were not done which they might afterwards consider to be further tacit conditions or provisions, arising out of given circumstances. Had they succeeded in this, they would have won a complete victory. Nothing remained to the Federalists but to allow them to choose between unconditional adoption and unconditional rejection. This was the alternative presented to the particularists. And when it became clear that this was the only alternative, it was found that there was enough discretion and patriotism left to cause a sufficient number to prefer the possible evils of the con-

of the nature you describe. My opinion is that a reservation of the right to withdraw if amendments be not decided upon, under the forms of the constitution, within a certain time, is a conditional ratification; that it does not make New York a member of the new Union, and consequently that she could not be received on that plan. Compacts must be reciprocal; this principle would not in such a case be preserved. The constitution requires an adoption *in toto* and forever. It has been so adopted by the other states. An adoption for a limited time would be as defective as an adoption of some articles only. In short, any condition whatever must vitiate the ratification. . . . The idea of reserving a right to withdraw was started at Richmond, and considered as a conditional ratification, which was itself abandoned as worse than a rejection." Hamilton's Works, I., p. 465.

stitution to leaving the Union, as there was found in the other states a sufficient number who preferred these same possible evils to the certain dangers attendant on a second general convention, or the certain ruin consequent upon a continuation of the old confederation.

When we consider the situation of the thirteen colonies and their relations to one another; when we follow the development which, in consequence of this situation and these relations, their political affairs and political theories received during the revolutionary war and the following years; and endeavor to express the result in a few words, we are compelled to say with Justice Story, that we ought to wonder, not at the obstinacy of the struggle of 1787 and 1788, but at the fact that, despite everything, the constitution was finally adopted.[1] The simple explanation of this is that it was a struggle for existence, a struggle for the existence of the United States;[2] and that after the dissolution of the Philadelphia convention it could be saved[3] only by the adoption of the proposed constitution, no matter how well grounded the objections that might be made to it.

The masses of the American people in their vanity and too great self-appreciation are fond of forgetting the dreadful struggle of 1787 and 1788, or of employing it only as a name for the "divine inspiration" which guided and en-

[1] Comm., I., § 287.

[2] Washington writes to Colonel Lee: "In our endeavors to establish a new general government, the contest, nationally considered, seems not to have been so much for glory as existence. It was for a long time doubtful whether we were to survive as an independent republic, or decline from our federal dignity into insignificant and wretched fragments of empire." Marshall, Life of Wash., II., p. 130.

[3] "I will only say as a further opinion, founded on the maturest deliberation, that there is no alternative, no hope of alteration, no intermediate resting place, between the adoption of this [constitution], and a recurrence to an unqualified state of anarchy with all its deplorable consequences." Washington, Feb. 7, 1788. Writings, IX., p. 319.

lightened the "fathers" at Philadelphia.[1] In Europe this view of the case has been generally accepted as correct. Much eloquence has been lavished in laudation of the "isolated fact in history," that thirteen states, loosely bound together as one confederate body, did not see in the sword the only engine to weld together their political machinery, which was falling to pieces, but met in peaceful consultation and agreed to transform a confederacy of states into a federal state of masterly construction. In America this is an inexhaustible theme for Fourth-of-July orations, and in Europe it is only too frequently used as a text for doctrinarian politico-moral discussions. With history, however, it has nothing to do. The historical fact is that "the constitution had been extorted from the grinding necessity of a reluctant people."

[1] This is not a mere idle phrase; it is one of the standing formulas in which the self-complacency and pride of a people who esteem themselves special objects of the care of the Ruler of the Universe, find expression We reproduce one illustration of this, out of a whole multitude: In the North American Review (1862, I., p. 160) we read: "Such a government we regard as more than the expression of calm wisdom and lofty patriotism. It has its distinctively providential element. It was God's saving gift to a distracted and imperiled people. It was his creative fiat over a weltering chaos: 'Let a nation be born in a day.'"

CHAPTER II.

The Worship of the Constitution, and its Real Character.

"Mr. Cobb the other night said it [the government of the Union] had proven a failure. A failure in what? . . . Why, we are the admiration of the civilized world, and present the brightest hopes of mankind.[1] No, there is no failure of this government yet."[2] In these words Alexander H. Stephens expressed his judgment concerning the constitution and the political history of the Union, on the eve of the four years' civil war. Four weeks later he accepted the position of vice-president of the Confederate States, a position which he retained until the close of the war. A few years after the restoration of the Union, he published a comprehensive treatise,[3] which is at once an emphatic reiteration and explication of that declaration, and a justification of the rebellion, as well as of his personal participation in it.

[1] By "government" is not here meant the administration of the time, but the whole system of government created and established by the constitution.

[2] Governor Hamilton, of South Carolina, one of the most distinguished incitors of the nullification movement, said, after his nomination as president of the convention of 1832, which issued the celebrated nullification ordinance: "Our present circumstances are a commentary on the safety and beauty of our constitution. In other countries we should render ourselves obnoxious to the charge of an attempt to disturb and change the very elements of government. Here all goes on with tranquillity, and with the harmony of the spheres themselves." Niles' Register, XLIII., p. 219.

[3] A Constitutional View of the late War between the States. 2 vols.

Only a thorough study of American history can solve the enigma how a man of so much acuteness as a thinker, and of so much intelligence, one who has spent his whole life in the study of political questions, could honestly say that his views and his actions were in complete harmony. Stephens is not an isolated example of this phenomenon. The whole American people, until late in the civil war, were entangled in the error which lies in this contradiction, and according to all appearances it will be a long time before they will free themselves from it entirely.

It devolved upon the Federalists, to whose efforts it is due that a constitution with the capacity to live was substituted for the articles of confederation, to put this constitution in operation. Scarcely had they so far accomplished this as to make the people fully conscious of the good results of the change, when the government passed out of their hands into those of their opponents, to continue in them unchallenged for many years. The anti-Federalists had changed their mode of warfare in a degree proportionate to the change for the better which had taken place in every department of practical life. With increasing vehemence they accused the Federalists of having done violence to the constitution in order to accomplish their own ruinous designs. But their unmeasured denunciation of the constitution itself became gradually less frequent and less severe. It was not long before they directly accused the Federalists of traitorous attacks upon it. On the other hand, all the horrible shapes which they had conjured up during the debates of 1787 and 1788 had now disappeared. And even before they came into power they had ceased to find fault with the constitution. It became their chosen standard in the battle they were waging with all the energy of fanaticism against their opponents.

It is possible for us to trace the earliest beginnings of the worship of the constitution. At first it was looked upon as the best possible constitution for the United States.

By degrees it came to be universally considered as a masterpiece, applicable to every country. This was preached with so much unanimity and honest conviction, although internal quarrels were raging all the time, that the propagandism of the new faith reached even to Europe. In the United States this conviction grows steadily stronger, although parties not only differ concerning the advisability of certain practical provisions of the constitution, but have been from the first diametrically opposed to one another in their understanding of the principles on which it is founded. From the close of the century, that is, from the time when the opposing principles assumed a fixed form, the constitution has been the political Bible of the people. The child sucked in with his mother's milk the conviction that this was the light in which he should regard it. The paternal *sic credo, stat fides mea pro ratione*, was a guaranty for the rightfulness of this conviction. What should be deduced from the constitution, in the future, was quite another matter. The wilder the war of tongues, the louder the cry of the constitution was raised on every side, and the more energetically did every one swear not to deviate from it, even by a hair's breadth. For four years the people of the United States tore one another to pieces in the most frightful civil war recorded in history, each camp thinking, in the best of faith, that it was following the standard of the constitution. The time will come when it will be difficult to conceive how even Europe, which it did not concern, could, in view of the seventy-five years of contest over it, have so universally and so emphatically united in the non-critical laudations the constitution has received.

To rightly estimate the degree of unconditional admiration of which it was the object, and to what an extent this admiration influenced the political thought of the country, it must be remembered that it was by no means confined to the great masses of the people. The constitution has found

many learned and intelligent commentators; but they have all considered its excellence to be an undoubted and universally admitted fact. What should have been only the result of their investigation, they made the premises of their arguments. And these arguments have been confined to the interpretation and to the bearings of the separate provisions of the constitution. Much ingenuity has been spent in showing how its several provisions might be harmonized with one another and with the peculiar ideas of their authors on the nature and purpose of the general government. There has been no attempt as yet to consider the several provisions as parts of a whole, or to subject the whole to an objective critical examination in the light of history. The abler commentators, like Story, have now and then been forced upon conclusions from which it is but one step to such a course of treatment. But they have never carried out their chain of thought to that extent. They always break off at the decisive point, and proceed to the next question.[1]

[1] Still less has been accomplished in this direction by the strikingly small number of European writers who have treated of the United States. They content themselves as a rule with showing the excellence of the several constitutional provisions in an intelligent manner, and in a general way. Even De Tocqueville's much-esteemed book is of this character, so far as it treats of the constitution at all. Through the whole work there runs a vein of doctrinarianism and vagueness which is exceedingly misleading to superficial minds. The whole treatise proves that De Tocqueville had never thoroughly studied American history; and hence it is that it bears so very different a character from his masterly works on French history. It is apparent from every chapter of his book, that he built essentially upon what he saw, or thought he saw, during his comparatively short stay in America, and especially upon what Americans told him. Spite of this, however, his extraordinary endowments permitted him to cast many a profound glance into American affairs and into the spirit of the people. But history has shown that many of the most important points escaped him altogether, and that in others his judgment was exceedingly erroneous. His work should therefore be perused with great caution. It is of no importance that the Americans are lavish in praise of it. It is cleverly written, and his judgment is on the whole so favorable, that it must seduce Ameri-

This is not the place to go into a thorough investigation of the causes which led all classes of the people to a veneration for the constitution, that bore at once the character of an esteem which did much good and of a most ruinous idolatry in which the idol worshiped was themselves. We must confine ourselves here to two points which contributed largely to this effect, for the reason that they seem necessary to the understanding of what follows.

The origin of the constitution and the first years in which it did so much for the good of the people by producing a radical change in the unhappy situation of affairs after the war, were contemporaneous with the adoption or invention of political or party principles. The political reasoning of the school which gave tone to the time started out with the assumption that the individual was a monad floating through the universe and governed by independent laws inherent in himself, not a member of a given society into which he was born. The consequence was, that certain principles resulting from this mode of reasoning were substituted for actual facts, as a foundation for the social and economic condition which it was sought to bring about. As the basis of these principles was discovered in human nature, they were necessarily declared to be unchangeable and applicable to all times and to every people. Their tendency therefore was, on the one hand, to destroy the existing state of things; for any title not in harmony with these principles was a fraud and a usurpation and was denounced as a weak and damnable species of commerce with the injustice of a thousand years. But on the other hand, to adopt this philosophy would be to declare stagnation the natural condi-

cans so long as they have so little of objectivity in judging themselves. But even among them other and different views are sometimes heard. Thus *The Nation*, a very ably edited weekly journal, says, Oct. 17, 1872, p. 251, in an article on Francis Lieber: "He could not, and would not if he could, write a brilliant, superficial [!] and attractive work like De Tocqueville's 'Democracy in America.'"

tion of all social and political order. If the principles were to be unchangeable, incapable of refinement and progress, there would be no possibility of development, for principles are only the quintessence of the aggregate intellectual and moral knowledge of a people or of the age, reduced to the simplest formula.

We have already seen that even in America, at the outbreak of the Revolution, the soil was prepared for a system of politics based on absolute principles. The French Revolution caused the seed to germinate here more rapidly and luxuriantly than in any other part of the western civilized world. Men played now with systems as they had formerly with foot balls, said Chauncey Goodrich.[1] The desire to carry out these principles immediately with all their practical consequences—so far as such a desire was observable in the United States at all—was soon given up in many respects. But for this very reason the principles became more universal and assumed the shape of theoretical truths. They became the creed of the public which every lover of freedom, and especially every republican, was obliged to profess. Hence it was obvious that the "fathers" must have been either their earliest advocates or their originators. That a great many of the founders of the republic, partly through their own experience and partly in consequence of the excesses of the French Revolution, recognized the deceptive and dangerous vagueness of these political dogmas, had no effect on the *a priori* convictions of the masses of the people. Even the small minority of the more intelligent could not completely free themselves from them.

But it did not stop here. The more the war of the Revolution and the struggle to transform the Union so that it might live, became things of the past, the thinner the long line of able combatants in the internal and external strug-

[1] Gibbs, Wolcott, I., p. 130.

gle for national existence grew, the more dazzling became the light in which the people viewed that whole epoch and its representatives. It mattered not how many or how great the short-comings which sober criticism or blind party-spirit had discovered in all these personages—Washington to a certain extent excepted—the "fathers" of the republic were considered as an isolated historical phenomenon of purity of motive and political wisdom. But they had embodied the sum total of their political thought and political experience in the constitution. The latter was, therefore, the culmination of the "storm and stress" period of the young republic, and these absolute political principles were to be considered as its firmest foundation. Both causes co-operated to engrave the constitution on the minds of the people, and it gradually assumed there the character of perfection.[1]

The second element which contributed to lift the constitution as a whole above the level of criticism is based on deeper causes. Their effects have been farther reaching and of longer duration.

It is impossible to even hastily turn over the pages of the debates of congress without being struck by a very important circumstance, to be found in the history of no other constitutional state. Up to the year 1861, there were but few important laws of a general character proposed which, while under discussion, were not attacked as unconstitutional by the minority. The arguments are scarcely ever confined to the worth or worthlessness of the law itself. The opposition in an extraordinarily large number of instances starts out with the question of constitutionality. The expediency or inexpediency of the law is a secondary question, and is touched upon only as a confirmation of that first decisive objection.

[1] Pomeroy (An Introduction to the Constitutional Law of the United States, p. 102) writes, in 1870: "Our fathers, by an almost divine prescience, struck the golden mean."

We need not here examine how honest these chronic constitutional scruples of the minority for the time being were. It is sufficient to mention the fact that for over seventy years all parties have followed these tactics when they found themselves on the side of the opposition.[1] The bearing, therefore, of all the general provisions of the constitution, and even of its separate terms, was, in the course of time, determined in the most opposite senses. There were a number of persons in every congress observant enough to notice this fact. But they never followed up the question far enough to ascertain whether this phenomenon was not to be accounted for in part by a fundamental defect in the constitution itself. This would not have been the case, were it not that their thought on the matter was under some heavy pressure from without.

As the country became more democratic, men distinguished in politics became less and less the political leaders of the people. They, indeed, apparently claimed that position, but in fact they went along with the stream, concerned only to swim at the head. Men really independent in thought or action by degrees appeared more rarely in congress and among politicians outside of it.[2]

The idea of representation lost its original and only

[1] We read in an article in the *Nation*, Nov. 7th, 1872, (No. 384, p. 300): "In spite of its supposed [!] precision, and its subjection to judicial construction, our constitution has always been indirectly made to serve the turn of that sort of legislation which its friends call progressive and its enemies call revolutionary, quite as effectively as though congress had the omnipotence of parliament. The theory of latent powers to carry out those granted has been found elastic enough to satisfy almost any party demands in time of peace, to say nothing of its enormous extensions in time of war." Since the end of the civil war admissions of this nature are found more frequently, a happy sign of progress towards a clearer judgment among thinking people.

[2] Hamilton, as early as 1800, writes to King: "In the two houses of congress we have a decided majority. But the dread of unpopularity is likely to paralyze it." Hamilton, Works, VI., p. 416.

justifiable character, and was prostituted to this, that representatives should be the mere mouthpieces of their immediate constituents.[1] In particulars it was necessary to leave them sufficient room, but the unripe political notions, the preconceived opinions, the vague instincts, the arbitrary sympathies and antipathies of the majority of these constituents, became the sub-structure of their labors. From the beginning of Washington's administration, Jefferson's adherents preached that the maxim *vox populi, vox dei* was a theoretical truth applicable under all circumstances. By degrees it became the actual rule of politicians, until finally it would have been considered not only folly, but a crime against the spirit of republican institutions, to defend one's own dissenting opinion against the *vox populi*, once it had pronounced with any degree of definiteness on a given proposition. Idealistic doctrinarianism and demagogism had begun the work; the moral cowardice and pusillanimous self-interest of politicians continued it, until finally it seldom occurred that even morally strong and independent thinkers approached questions of the nature mentioned above in a skeptical spirit, or that they considered them as questions at all. The tendency to the creation of political dogmas kept pace with the development of democracy.

At the head of all these dogmas—those of natural rights and the social contract in part excepted—stood the supremacy of the constitution. Only a few, like Macon of North Carolina, whose independence savored of affectation, ventured to preserve the tone in which they had spoken in

[1] This tendency was very evident, even in the debates of Nov., 1791, when the proportion of representatives was fixed. See especially the speech of Page, of Virginia. Benton's Abridgment of the Debates of Congress, I., p. 325. The same may be said of the debate on the assumption by the Union of the debts contracted by the states during the revolutionary war. Benton, I., passim.

1787 and 1788.[1] The opposition of the anti-Federalists, as already remarked, now took the form of a pretended struggle for the constitution.[2] Experience soon taught the leaders that these tactics would insure them the readier and more energetic support of the masses of the people. When the opposition had assumed this tone it was difficult for the Federalists not to assume it also. At first, part of them took the position which Hamilton had taken, and saw in the constitution the best that could be accomplished under the circumstances of the time; and others professed themselves satisfied because it was free from the essential defects of the articles of confederation. They were far removed from unconditional admiration. Their entire struggle for its ratification bore the mark of a defense against unjust attacks. They lavished relatively little direct praise on the constitution; and when they did, it was most frequently in the shape of a comparison with the articles of confederation.[3] Only with reluctance did the Federalists surrender this reserved attitude. But they could not entirely resist the pressure. Their adherents among the masses of the people were not able to understand how they could continue cool critics of the constitution they had planned, the adoption of which was due solely to their efforts, while

[1] Fisher Ames writes to Wolcott, Sept. 2, 1795: "Some opinions are general and well established: admiration of our constitution and government," etc. Gibbs, Mem. of Wolcott, I., p. 229.

[2] The Virginia and Kentucky resolutions were the first official declaration of principles on which the doctrine of state rights was built. We quote from the Virginia resolutions: "Resolved, That the general assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the constitution of the United States." And later: "That the good people of the commonwealth, having ever felt and continuing to feel . . . the most scrupulous fidelity to that constitution, which is a pledge of mutual friendship and the instrument of mutual happiness." In like manner, the Kentucky resolutions declare that the state "is sincerely anxious for its [the constitution's] preservation."

[3] Wash's. Writ., IX., pp. 318, 319.

the anti-Federalists were preparing a shrine for it on the high altar of the temple of freedom.

A problem of this kind was then, and would be to-day, of much greater practical significance in the United States than, for instance, in England or in Germany; because in some respects the political thought of Americans is much more superficial and immature. In political questions of a concrete nature, the Americans are on an average more competent judges than any people on the continent of Europe.[1] The political institutions of the country, its social and especially its economic relations, educate them from the cradle to independent thought on all questions involving material interests, and encourage them to summon their whole intellectual strength for their solution. But in the wearing struggles of daily life new problems of this character continually arise, and almost exhaust their intellectual strength. Their energy of mind is not in consequence great enough to give much depth to their thoughts on political problems of a general nature. The disposition towards generalization is sufficiently developed, but their observations are neither various, nor long, nor reliable enough to warrant inductions of any real value. Half-true and vague ideas are therefore raised by them to the dignity of unimpeachable principles. These are appealed to on every occasion, so that they rapidly rise to the dignity of sovereign laws. And the more they assume this character, the stronger does the conviction become rooted that they are the stars by which the ship of state should be steered. The further the idea of democracy was pushed, first in theory and then in practice, the more did the doctrine of the equality of all men become perverted

[1] The masses of the population in the southern states are here excepted. Slavery has in this, as in all other respects, produced an abnormal state of affairs. Neither do we here include adopted citizens, although in the upper strata they very soon become assimilated, so far as this matter is concerned, to the native Americans.

in the minds of the masses into the equal capacity of all men to decide on political questions of every kind. The principle of mere numbers steadily gained ground.

The political philosophy of the masses was comprised in these vague maxims. They clung to them with all the self-complacent obstinacy of the lowest and most numerous body of the working classes. They were nowhere more sensitive than here. Whoever desired their favor dared not touch this idol of theirs, and could scarcely ignore it unpunished. The fetish had been raised up for the worship of the masses by their leaders, and the masses in turn compelled their leaders to fall down and adore it. Under no form of government is it so dangerous to erect a political idol as in a democratic republic; for once erected, it is the political sin against the Holy Spirit to lay hands upon it.

The history of the United States affords the strongest and most varied proof of these assertions. Not only the quarrels of 1787 and 1788, but also the circumstances under which the constitution originated, would have inclined one to believe anything rather than that the constitution would be chosen as the chief idol of the people.

The brilliant contrast it presents to the articles of confederation is not a sufficient explanation of this, not even if it were granted that the extraordinary economic prosperity of the country was due to it to the unmeasured extent claimed by Americans themselves.[1]

The current view places the labors of the Philadelphia convention in a totally false light, but the difficulties that convention had to surmount were so great that they can scarcely be exaggerated. The conflict of views and of real or

[1] "It is to be feared we have grown giddy with good fortune; attributing the greatness of our prosperity to our wisdom rather than to a course of events and a guidance over which we had no influence." Quincy in the house of representatives, April 19, 1808. Benton's Deb. of Congress, III., p. 700.

supposed interests was too great to permit of even an apparent reconciliation between them by any formula consistent with the theories of the time. A reconciliation was, on the other hand, a question of life or death to all sections of the people. It therefore became imperative that mutual sacrifices should be made at every step, and this not only in principles, but also in theories; that is, both sides were compelled, by making concessions at variance with their principles, to be untrue to their ideal. The final result could not in consequence be a harmonious whole, complete in itself. The most that could be accomplished was a certain amount of reconciliation, the effect of which was the prevention of the dissolution of the Union and the creation of a federal power with the character of a federal government to such an extent that by it the possibility of the growth of the members of the federation into one consistent whole was secured.[1]

A model constitution—so far as it is allowable at all to speak of such a one—would have done poor service for the United States. Besides it is very probable that it would not have been ratified. But if it had been adopted, it would not have lasted long, for the reason that it was not at all in harmony with the actual condition of affairs.

It was necessary that the constitution should be highly elastic in its nature. Its terms must be susceptible of

[1] The originators of the constitution were conscious at the completion of their work that they had accomplished no more. They say in their communication to congress, which accompanied the constitution: "In all our deliberations on this subject we kept steadily in our view that which appeared to us the greatest interest of every true American—in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention to be less rigid in points of inferior magnitude [? !] than might have been otherwise expected, and thus the constitution which we now present is the result of amity and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable." Elliot, Deb., I., p. 305.

great extension or contraction of meaning, according to the want of the moment. A more brittle bond would infallibly be broken. This is not a matter of speculation. The whole history of the United States, from 1789 to 1861, demonstrates it.

Almost from the very day on which the new order of things was inaugurated, the conflict between the opposing tendencies broke out anew, and before the close of the century it attained a degree of violence which suggested very serious fears. The thought of the dissolution of the Union was current among both parties. In accordance with their whole political tendency the anti-Federalists permitted themselves to be urged on more frequently and more easily to conceive of taking such extreme steps. But even in the speculations of the Federalists on the future, this constituted an element which was taken into consideration with other contingencies. It is indeed true that it was frequently only by vain threats that the minority sought to exert a pressure on the majority. The view which afterwards became gradually more general, that during the first years of the existence of the republic the thought of separation was never seriously entertained, is a historical misrepresentation made in the interests of party. Until the first part of the nineteenth century, the dissolution of the Union was a standing element in political speculation; and both previous to and after that period, it was repeatedly considered possible and even probable in moments of excitement, by either party, that it would be necessary to resort to this radical remedy.

Were it not that the letter of the constitution permitted all parties to verge upon the actual dissolution of the Union, without feeling themselves responsible for a breach of the constitution, it is likely that long before 1861, a serious attempt in that direction would have been made. Thanks to this circumstance, however, the danger of ruin-

ous haste was considerably lessened. Time was given to passion to abate its intensity, and with every day's delay the probability increased that all parties would become conscious of the preponderance of their common interests over those which were divergent. When the opposing party yielded in the slightest particular, there was always offered the possibility of a return to the right path before the decisive step was taken. In the meantime, the prejudices and customs, the diversity of which Nathan Strong had designated as the greatest obstacle in the way of a rational regulation of national affairs,[1] became assimilated to one another, at least in some respects. Commerce, social intercourse and custom created new material, intellectual and moral bonds, which gradually rendered a breach more difficult.

But contemporaneously with this, and from the very first, the material and irreconcilable differences that existed grew more marked. Yet the constitution afforded such a field for a war of words, and the field was so readily taken, that in the northern states, which were rapidly becoming united in all their interests, the erroneous view began to obtain currency in the third decade of this century that all difficulty would end in a war of tongues. There was something of a correct instinct at the foundation of this disastrous and foolish notion. While the "irrepressibleness" of the conflict became clearer year after year, the ambiguous nature of the constitution became apparent in an equal degree. The field became gradually broader and more inviting to a tournament of words; and the extraordinary dilatability of the boundaries postponed the moment of the breach. It became possible in the more populous and wealthy half of the Union, which was, morally and intellectually, the more highly developed, to build up such a solidarity of interests and for the people

[1] Gibbs, Memoirs of Wolcott, I., p. 40.

to realize the existence of this solidarity of interests to such an extent that they were enabled, by an appeal to the sword, to decide the one great question as to the nature of the Union,—a question to which, from the terms of the constitution, no certain answer had ever before been given,—and to find a solution of it in harmony with the progress of civilization and the best good of the whole country.

These views are, to a great extent, very different from those prevalent on the subject; but they must accord with historical truth, for only in such case is the political history of the United States at all rational or intelligible.

Calhoun and his disciples were not the authors of the doctrine of nullification and secession. That question is as old as the constitution itself, and has always been a living one, even when it has not been one of life and death. Its roots lay in the actual circumstances of the time, and the constitution was the living expression of these actual circumstances.

CHAPTER III.

THE INTERNAL STRUGGLES DURING WASHINGTON'S TWO ADMINISTRATIONS. ALEXANDER HAMILTON. THE FIRST DEBATE ON THE SLAVERY QUESTION. INFLUENCE OF THE FRENCH REVOLUTION. CONSOLIDATION OF PARTIES AND GRADUAL INTENSIFICATION OF GEOGRAPHICAL DIFFERENCES.

The constitution had gone into operation in 1789, and as early as 1790 the consolidating influences of the firmer government seemed so burthensome and dangerous a load, that the anti-Federalists began to grow restless under the yoke, and to long for the loose management of affairs that had existed under the confederation. The more nearly the measures of the administration and of the majority of congress became parts of a system planned with a really statesmanlike mind, the firmer the organization of the opposition became and the more did its resistance assume the character of one based on principle.

The Federalists had not expected this, although they must have been prepared for it after the struggle over the ratification of the constitution.

Washington fell a victim to the illusion that it was possible to bring about the harmonious co-operation of all the forces of the country. All that was needed, he thought, was to convince the opposition that the administration had nothing but the best interests of the country at heart and the desire to do full justice to them. This illusion caused him to take a step which was accompanied at first by good results, but which, in the course of time, contributed

a great deal to intensify the internal conflicts during his administration.

The construction of the Union had undergone so radical a transformation that when the new order of things first went into operation, there were no organized opposing parties in the field. As a matter of course, future parties were necessarily divided on the same questions which in the struggle for the constitution had been looked upon as the principles at issue between its advocates and opponents. By the adoption of the constitution the theoretical struggle was temporarily ended, but before it attained a fixed concrete form in practical politics, it was necessary that some time should elapse. In the first place, there were in congress and among the people only divergent political tendencies. How, when, and to what extent, these should grow into differences or become consolidated in party platforms was a matter necessarily dependent upon circumstances.

Washington's endeavor was not only to look upon the nation as the sole party, but also to exercise his influence, wherever he legitimately could, to cause the same feeling to prevail over the agitations of incipient party spirit. Whether he was guided by this desire, and to what extent, in the selection of the members of his cabinet, cannot be certainly determined. Jefferson had been in Paris when the question of the adoption or rejection of the constitution was pending, and if he expressed any doubt concerning its value, he took no decided stand in reference to it when he entered the cabinet as secretary of state. This much, however, was certain, that he was a great deal more inclined to the views of the opponents of the constitution than to those of Hamilton, who was assigned to the secretaryship of the treasury. If, therefore, it cannot be claimed that Washington purposely confided the two most important positions in his cabinet to men who were the political antipodes of one another, it is most

probable that it occurred to him, from the very first, that they would not be representatives of the same political views when the diverging tendencies should begin to develop themselves into definite party programmes. That this was not a reason in his mind against, but rather in favor of, their choice, is obvious from his almost anxious efforts to prevent the collapse of the cabinet when the genesis of parties was complete and the two secretaries had become political antipodes. The result of these efforts only proved that the hope with which he entered on his presidential career was an idealistic dream. In certain cases, Washington could, indeed, effect a compromise, but to reconcile contradictions by his own independence of party was as much beyond the domain of possibility as the prevention of parties themselves.

Washington was extraordinarily well fitted to play the part of a mediator. It is a matter of wonder that he was able to hold his heterogeneous cabinet together so long. But even he was able to do so only for a time and apparently. He himself was compelled more and more to surrender his position in relation to parties. In a democratic state, the executive cannot long preserve systematically and on principle the character of a mediator, when there is not at the same time a compromise party among the people. Washington was convinced of the necessity of prosecuting a systematic policy, and the heads of his council were the chief representatives of different systems, whose differences events were daily making stronger and more marked. The anti-Federalists became the declared opponents of the internal and external policy of the president, and Jefferson their recognized leader. The attempts at mediation had no effect but to postpone the formal declaration of the war which, as a matter of fact had been waged since 1791 between the two secretaries as openly as in congress. The prize was not worth the breaking of the staff which ought to be the most im-

mediate and the absolutely reliable support of every president.

The anti-Federalists did not permit the administration to remain a moment in doubt that they held fast to the maxim which declared mistrust of the government to be the corner-stone of freedom. Wherever they found the least positive ground of mistrust, there they, too, were to be found holding up the most sombre picture which their excited imaginations could suggest, precisely as they had done in their efforts against the ratification of the constitution. The burthen of their speeches was no longer the danger to the liberty of the individual, but to the rights of the states, which were threatened on every side. Every question was treated with direct reference to state sovereignty. The more the legal consolidation of the Union became an accomplished fact, the greater was the reaction of particularistic tendencies against the increased pressure. The mere fact of the adoption of the constitution could not at once change the real state of affairs or the modes of thought of the people. Nothing but time could operate any change in these two most essential factors. To begin with, the preponderance of particularistic tendencies was still great enough to afford, from the very first, the strongest proof of Hamilton's assertion that this constitution was the least which, spite of the actual condition of things and the mode of thought of the people, could hold the Union together.[1]

Hamilton had recognized, and rightly, that the government should, first of all, direct its attention to the question of finance. The Federalists shared his conviction that nothing would have so much influence in confirming the new order of things as his financial projects. There were some even who believed that the continued existence of the

[1] "I propose . . . . to discuss the necessity of a government at least equally energetic with the one proposed, to the attainment of this project [the preservation of the Union]." The Federalist, No. I.

Union depended upon their adoption.[1] This may have been going too far; but it is certain that no other measure of the federal government contributed in even an approximate degree to the actual consolidation of the Union.

The unconcealed contempt with which the European powers looked down upon the United States was keenly felt by the American people. But the good opinion of foreign countries could be regained only on condition that the credit of the Union was restored. The only means by which the advantages of the new over the old constitution could be shown to any great extent, and in a tangible manner, was to take the comparison between them, in one most important matter, out of the domain of speculation. Trade and commerce, the depressed condition of which had most effectually opened the way for a recognition of the insufficiency of the articles of confederation, would necessarily be greatly and favorably influenced thereby. By this means there would be created a real bond of interest between the government and the people which could not easily be dissolved. All attempts to dissolve it must be in vain, so far as the creditors of the state were concerned, since their interests demanded still more unconditionally the greatest possible strengthening of the federal government. In case the creditors of the individual states were taught to look to the general government too, these reasons would apply

[1] The elder Wolcott writes, April 23, 1790: "Your observations respecting the public debts as essential to the existence of the national government are undoubtedly just—there certainly cannot at present exist any other cement. The assumption of the state debts is as necessary, and indeed more so, for the existence of the national government than those of any other description; if the state governments are to provide for their payment, these creditors will forever oppose all national provisions as being inconsistent with their interest; which circumstances, together with the habits and pride of local jurisdictions, will render the states very refractory. A refusal to provide for the state debts, which it seems has been done by a committee of congress, if persisted in, I consider as an overthrow of the national government." Gibbs, Mem. of Wolcott, I., p. 45.

equally to them. The funding of the debt of the Union and the assumption by the Union of the debts of the states were, therefore, the two principal pillars on which the new political structure could be made to rest. If the government could point to a steady and rapidly-increasing prosperity, instead of the almost universal bankruptcy under the confederation; if the creditors of the Union and of the states alike would support it; it could stand even greater storms than the pusillanimous men of 1789 had prophesied. Violent storms did assail it, but it withstood them.

The anti-Federalists did not ignore the bearing of the so-called Funding Act and Assumption Bill. The Assumption Bill was very unpopular in several of the states, because the sordid designs which, during the last years of the confederation, had been asserted with so much shameless boldness were still pursued by many. The main cause, however, of the obstinate opposition to both bills was their political significance. Only when the material interests affected were very considerable, did political considerations have little weight.[1]

Even a part of those who, from 1785 to 1787, had been, because of impending anarchy, the warmest advocates of a stronger general government, allowed themselves, at the first attempt to instil life into the letter of the constitution, the fruit of so much labor, to be carried off in a contrary direction by the particularistic instincts which had become a part of their very flesh and blood. Madison now took the first step on the path which soon completely separated him from his old associate Hamilton, and even from his own past. True, Jefferson brought about a compromise and effected the adoption of Hamilton's resolutions.[2] But he

[1] South Carolina agreed with Massachusetts on the question of the assumption of the state debts, because her debt was over five millions of dollars. In New Hampshire and Pennsylvania, on the other hand, the opposition to the bill was great, and with many convincing.

[2] July 16, 1790.

declared later that he had been misled by Hamilton and that he regretted this mistake more than any other of his political life.[1]

Hamilton had, however, to pay a price for this service, a fact which afterwards proved to be of the highest importance. He saw himself compelled to do so because the Assumption Bill was rejected by the house, in committee of the whole, and because party feeling had reached such a height that the action of congress had come to a complete standstill. White and Lee of Virginia finally concluded to change their votes.

The consideration paid by Hamilton was that he induced certain of his friends to vote for the establishment of the new capital on the Potomac instead of on the Susquehanna.

The whole compromise was a bargain between the north and the south. True, there were decided Federalists in the south, and some of the members of congress from the northern states emulated the hot-headed anti-Federalists of the south. But the friends of Hamilton's financial policy were so preponderantly from the northern states, and its opponents from the southern, that the "geographical" and "sectional" character of the parties was a matter of frequent mention and lament.[2] It is well to call special attention to this, because the erroneous view largely prevailed afterwards that the mischievous political division

[1] Jefferson writes to Washington, September 9, 1792: "The first and only instance of variance with the former part of my resolution (to intermeddle not at all with the legislature) I was duped into by the secretary of the treasury and made a tool for forwarding his schemes, not then sufficiently understood by me; and of all the errors of my political life, this has occasioned me the deepest regret." Jefferson, Works, Vol. III., p. 460.

[2] Debates of Congress, I., pp. 287, 292, 296. (When mention is made in this work of the Debates of Congress, Benton's Abridgment is always meant, unless express reference is made to some other. I prefer as a rule to refer to it, as it is more readily accessible to readers.) Gibbs, Mem. of Wolcott, I., p. 46.

of the country by a geographical line dates back only to the Missouri compromise.[1] In the case before us, the geographical separation of parties was determined to some extent by the differences in the economic situation of the two sections,[2] and more especially by the purely financial side of the question.[3] Yet the principal reason was the difference of political thought in general, and the different interpretation of the nature and object of the Union.[4] In debate it was attempted not to permit this side to appear

[1] Certain letters of Jefferson especially are frequently adduced in support of this view. Jefferson himself, however, writes to Washington, May 23, 1792: "But the division of sentiment and interest happens unfortunately to be so geographical that no mortal can say that what is most wise and temperate would prevail against what is most easy and obvious." Jefferson, Works, III., p. 363. The view referred to in the text, however, is well founded to this extent that by the Missouri compromise a new and important element was introduced into the geographical division, an element of which more will be said hereafter.

[2] The memorial of the Virginia legislature mentioned in the next paragraph designates "the prostration of agriculture at the feet of commerce," as one of the two consequences of Hamilton's financial policy. The "anti-Federalists . . . fearful that the interests of agriculture might be sacrificed to the protection of commerce and manufactures, etc." Hildreth, Hist. of the U. S., IV., p. 119.

[3] "The owers of the debt are in the southern and the holders of it in the northern division." Jefferson, Works, III., p. 363. Hildreth (Hist. of the U. S., IV., pp. 137, 138) shows that this assertion was not wholly without foundation, although it was greatly exaggerated.

[4] Hildreth, Hist. of the U. S., IV., p. 119, says: "It may hence be concluded . . . that no question of fundamental principles as to the theory of government was really in debate between the Federalists and anti-Federalists, and that the different views they took of the new constitution grew much more out of difference of position and of local and personal interest than out of any differences of opinion as to what ought to be the ends and functions of government or the method of its administration." This is not a wrong view, but it is easy to misunderstand it. In the application of the theory parties diverged from one another so widely that their agreement on the theory of "government" had only a negative practical value: both parties made use of that theory for their own justification when their interests impelled them to a change of position with their opponents.

to an exasperating degree; but it was clearly in the background of all the speeches that were made. When the consolidation of parties had been carried far enough, and they stood arrayed more determinedly against each other, they dropped the veil. Even Jefferson, who was by no means a friend of unmasked warfare, declared after two years that Hamilton's system had its origin in principles inimical to liberty and would undermine the constitution.[1] The accusation was carried before Washington's tribunal, but indirectly it was aimed at himself also, as he had given the system his approbation. Inasmuch as Jefferson did not clothe it in milder words, he must have been urged very far; for he was always careful to appear to preserve the most respectful bearing towards Washington.[2]

Outside of congress and administration circles, the opposition immediately gave full rein to their anger. In North Carolina and Georgia the malcontents declaimed with special emphasis. In Maryland the question was agitated in the legislature. A resolution declaring the independence of the state governments to be jeopardized by the assumption of the state debts by the Union was rejected only by the casting vote of the speaker. In Virginia the two houses of the legislature sent a joint memorial to congress. They expressed the hope that the Funding Act

[1] "His [Hamilton's] system flowed from principles adverse to liberty, and was calculated to undermine and demolish the republic. . . . Thus the object of these plans, taken together, is to draw all the powers of government into the hands of the general legislature, to establish means for corrupting a sufficient corps in that legislature to divide the honest votes, and preponderate by their own the scale which suited, and to have the corps under the command of the secretary of the treasury, for the purpose of subverting, step by step, the principles of the constitution, which he has so often declared to be a thing of nothing, which must be changed." Jefferson, Works, III., pp. 461, 462.

[2] The expression here used is selected with deliberation. When Jefferson believed there was no danger that his words would be whispered in wider circles, he gave full vent to his secret animosity against Washington. I need only refer to his notorious letter to Mazzei.

would be reconsidered and that the law providing for the assumption of the state debts would be repealed. A change in the present form of the government of the Union, pregnant with disaster, would, it was said, be the presumptive consequence of the last act named, which the house of delegates had formally declared to be in violation of the constitution of the United States.

These resolutions of the house of representatives of Virginia drew from Hamilton the prophetic utterance: "This is the first symptom of a spirit which must either be killed or which will kill the constitution of the United States."[1] The spirit was not destroyed, and the symptoms rapidly increased in number, and soon became alarmingly noticeable.

It was not mere chance that this spirit revealed itself in combination with the question which afterwards imparted such magnitude to it, that the two halves of the Union finally waged a four years' war on the two sides of the alternative prophesied by Hamilton. Considered in itself it was a very insignificant incident, and one easily forgotten; but the smouldering flame into which the small spark was fanned at the moment showed what a conflagration might be kindled.

In February, 1790, the Quaker meeting in Philadelphia, and the Quakers in New York, sent addresses to congress, requesting it to abolish the African slave trade. In the same month a Pennsylvania society for the furtherance of the abolition of slavery asked congress to go to the full extent of its power to put an end to the traffic in human beings. The constitution did not leave the slightest doubt that congress had no authority whatever in the matter, except that it might impose a tax of not more than ten dollars per head on imported negroes.[2] Not a word, there-

[1] W. Jay, Life of J. Jay, II., p. 202.
[2] Art. I., Sec. 9, § 1.

fore, was said to urge congress to go beyond the letter of this provision. The only question was whether, and when, the petitions should be referred to a committee to report upon. This was sufficient, however, to excite many of the southern delegates to the most violent declamation, and to draw from them the most violent threats. The *noli me tangere* was thrown back at the north in tones as emphatic and haughty as it was subsequently by Calhoun or Toombs. Here we have the whole struggle of seventy years in a nutshell. All subsequent events were only the variations of the themes of these debates, the logical development of the principles here laid down, and their practical application to concrete questions.

The complete independence of the states was the basis of argument in this question. Disputants spoke only of the general government under the constitution as it actually existed. But for certain contingencies a mode of action was kept in view, and assumed to be legal, although it would not be revolution only in case that the assumption of the complete independence of the states and the impossibility of a constitutional change in the provisions relating to the powers of the federal government on that question were proven and recognized. In other words, the actual sovereignty of the states was assumed, although it was not recognized as the premise from which every demand could be justified with inexorable logic.

There was no inducement to subject the nature of the struggle to the profound examination which the full recognition of the bearing of these premises demanded. The representatives of the slave states did not endeavor to secure anything practical and definite under the name of a constitutional right. They touched the concrete question with which the debates were formally concerned only lightly, and lost themselves in abstract reasoning on slavery. On this first occasion they adopted a course of procedure to which they ever afterwards adhered. Partly on account

of the natural warmth of their temperament, and partly because excited by the fears which their evil consciences always kept awake, they widely overshot the mark. The dangers with which they saw the future pregnant became first the declared views of their opponents, whose wishes soon changed into demands and resolves. They were then attacked with such passionate argument, concluded with threats of such a nature, that one might imagine that the possible consequences of the alleged hostile plans of the north were already unbearable facts. All that had been done was to move a reference of the petitions to a committee. The representatives of the slave states immediately clothed their opposition in such a form as might have been expected if the motion meant that the petitions should be granted. All their arguments were directed against this assumed view. Tucker, of South Carolina, began with the declaration that "the commitment of it would be a very alarming circumstance to the southern states," because the request was unconstitutional.[1] Burke, of South Carolina, was certain that "the commitment would sound an alarm and blow the trumpet of sedition in the southern states."[2] Tucker forgot after a few moments that the only question before the house was the reference of the petition to a committee, and expatiated at length on the consequences of universal emancipation. He did not speak of rebellion, but declared that emancipation by law would infallibly lead to civil war.[3] Jackson, of Georgia, was decidedly of the same mind.

Madison had rightly remarked that earnest opposition was the best means to excite alarm.[4] His warning re-

[1] Debates of Congress, I., p. 208.

[2] Ibid.

[3] "Do these men expect a general emancipation by law? This would never be submitted to by the southern states without a civil war." Ibid.

[4] Ibid, I., p. 202.

mained unheeded. Once the debates had digressed to the question of emancipation, that question alone was discussed, and Madison's warning was examined from that standpoint only. The slaveholders, and afterwards their partisans in the northern states, endeavored to make the world believe—and for a long time not without success—that up to the time of the Missouri compromise, and even for half a generation after, slavery was so unanimously and sincerely condemned in the slave-holding states, that ways and means would infallibly have been found to get rid of the system were it not that the uncalled-for intermeddling of the abolitionists had produced a revolution in public opinion throughout the south. The expressions to which utterance was given in these debates are of great interest, for the reason that they afford a complete refutation of this assertion. Smith of South Carolina demonstrated "the absurdity of liberating the *post nati* without extending it to all the slaves old and young, and the great absurdity and even impossibility of extending it to all." In his opinion "nothing but evil would result from emancipation under the existing circumstances of the country."[1] He did not, however, limit his assertion to the existing state of the country and left it at least undecided whether slavery was an evil at all.[2] Great prominence was given by him to the assertion repeated over and over again until after the close of the civil war, that the southern states could be cultivated only by slaves. He based his argument not only on "climate and the nature of the soil," but referred also to the curse that rested upon slavery, to "the

[1] Deb. of Congress, I., p. 223.

[2] "The truth was, that the best-informed part of the citizens of the northern states knew that slavery was so ingrafted into the policy of the southern states, that it could not be eradicated without tearing up by the roots their happiness, tranquillity and prosperity; that if it were an evil, it was one for which there was no remedy." Ibid, I., p. 232.

old habits which forbid the whites from performing the labor."[1]

When the debates turned on a matter so remote from the subject under discussion, it was impossible not to pass judgment on the whole question of slavery from the standpoint of general ethics. The first impulse to this was given by the representatives from the north, who urged that the petitions of so respectable a body as that of the Quakers in relation to so great a moral evil, were deserving of special consideration. The representatives of the southern states replied to this with provoking irony. The Quakers were mercilessly lacerated, and many a thrust was aimed at the whole north, which had suddenly conceived so much horror for slavery and pretended to monopolize all morality and virtue. The sting was keenly felt, and in returning the attack no forbearance was shown. Boudinot of New Jersey complained that Paley had been "branded with the charge of countenancing slavery." The Bible was drawn into the controversy on both sides; and the debate was made to turn from the standpoint of general morals to the basis of positive religion.

In bold contrast to this was Jackson's declaration that the south would not stop short at anything if this question was seriously touched. He was not satisfied with prophesying discord and "civil war"; but distinctly enough held up to the zealots of emancipation, who should dare to beard the lion in his den, the picture of a court in which only lynch law was administered.[2]

This wrestling of minds on the question of slavery—the first since the adoption of the constitution—had no imme-

[1] Deb. of Congress, I., p. 233.

[2] "The gentleman [Scott of Pennsylvania] says, if he was a federal judge, he does not know to what length he might go in emancipating these people; but I believe his judgment would be of short duration in Georgia; perhaps even the existence of such a judge might be in danger." Ibid, I., p. 209.

diate practical results. In the light of later events, it appears already in these debates with remarkable clearness, that the difference was in its nature one which could not be smoothed over. But it was not yet recognized as the rock on which the Union was to be broken to pieces. Threatening and sudden as was its appearance on the horizon, it attracted men's eyes only for an instant. It remained yet to be seen whether the ship was even seaworthy. The waves which tossed at that moment so violently about her and began to break over her deck, claimed the entire attention of statesmen.

Hamilton's financial policy, which had led to the organization of the opposition to the administration and to the Federal majority in congress, was also the first actual inducement to a revolt against the authority of the general government.

The colonists had brought with them from England a deep aversion to excise taxes, which perpetuated itself, unabated, from generation to generation. The first congress, in its address of October, 1774, to the inhabitants of Canada, laid particular stress on the imposition of excise as one of the evils accompanying subjection to England.[1] In the nullification convention of New York, it was proposed by Williams, and later by Smith with something more of restriction, that the power to impose excise duties on any article which grew or was manufactured in America, should be expressly denied to congress.[2] Neither motion was, however, adopted, and the amendments to the constitution afterwards made contained no provision to that effect.

[1] "You are subjected . . . to the imposition of excise, the horror of all free states; thus wresting your property from you by the most odious of taxes, and laying open to tax-gatherers, houses, the scenes of domestic peace and comfort, and called castles of English subjects in the books of their law." The Western Insurrection. Contributions to American History, 1858, p. 127.

[2] Elliot, Deb., II., pp. 331, 411.

Nevertheless, excise impositions and arbitrary tyrannical government remained in the minds of the people as kindred ideas. Hence the first excise bill which was introduced into congress was rejected, on the 21st of June, 1790.[1] Yet Hamilton caused another bill to be introduced, and by the act of March 3, 1791, a tax was imposed on spirituous liquors distilled within the United States.

The dissatisfaction produced by this measure was very widespread, and from the first found strongest expression in the western counties of Pennsylvania, at that time the least thickly settled. The first indignation meeting in western Pennsylvania was held July 27, 1791, at Red Stone Old Fort.[2] Much plain talk was indulged in concerning the law; but its constitutionality was not then attacked. Passion had not yet reached such a state of violence as to permit this in face of the express provision of the constitution.[3] But it was not long before it came to this. On the 23d of August, the agitation committee of Washington county declared all who should accept any position under the law, or help to carry it out, enemies of the interests of the country, and put them under the ban of society. Fourteen days later the tax collector Robert Johnson was tarred and feathered, and robbed of his horse. It was not long before similar acts of violence were practiced upon other officials.

At first the administration was powerless against the disturbers of the peace, for it had not yet the means to oppose force by force. Congress now made haste to remedy this state of things, and to prepare itself in time for every contingency. The act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, became law on

[1] Gale and Seaton's Annals of Congress, I., p. 1644.

[2] Now Brownsville.

[3] "The congress shall have power to lay and collect . . excises." Art. I., Sec. 8, § 1.

the 2nd of May, 1782.[1] But while congress on the one hand placed the administration in a condition to ensure the enforcement of the law, it on the other made concessions to the malcontents, so that as far as possible the employment of force might be avoided. The act of May 8, 1792, lightened the tax a great deal, and guaranteed to the distillers alterations in other essential respects.[2] The administration, too, considered the right policy to be not to resort to force as long as it did not seem absolutely necessary. But its forbearance served only to make the malcontents bolder. The rough backwoodsmen and Irish who would not be persuaded that they had to contribute[3] to the support of the government and who considered unrestricted distillation to be a "natural right,"[4] had begun the movement. But in accordance with a resolve which was immediately made public, persons of a very different kind, some openly and others in secret, undertook to guide it. The measures of the patriots during the Revolution were copied, and corresponding committees established to communicate with the malcontents in all the other states of the Union. At their meetings resolutions were passed which extended the opposition far beyond the limits of this unpalatable law. Even secession from the Union was discussed.[5]

[1] Statutes at Large, I., pp. 264, 265.

[2] Statutes at Large, I., pp. 267–271.

[3] "Every circumstance indicates that we must contest with these madmen . . . . The people absolutely refuse to pay one shilling towards the public service. . . . . These men are so licentious and vain of their consequence that they consider the blood and treasure of the United States as their property. They arrogantly demand the public protection, and at the same time refuse to perform any of their duties to society." O. Wolcott to F. Wolcott, Gibbs, Mem., I., p. 156.

[4] Petition of Inhabitants of Westmoreland, 1790. Contributions to American History, 1858, p. 126.

[5] "There was indeed a meeting to consult about a separation." Jefferson to Madison, Dec. 28, 1794. Jeff., Works, IV., p. 111. See also J. C. Hamilton, Hist. Rep. U. S., VI., p. 96.

As usual, men talked in an exaggerated way, but there was enough that was serious in these things. The simple fact that a few counties could successfully evade the enforcement of a law of congress for three years must have excited great solicitude for the future of the Union in the minds of those statesmen who were a little more far-seeing than the rest. But there was another and more important side to the question. The crowd who carried on this disturbance on the stage thought of nothing except drinking their whiskey without paying any taxes on it; but the directors of the play were pursuing very different aims.

Hamilton's immediate object in the excise law was at first a purely financial one. But now he united another object to this. He recognized that the exercise of the powers expressly conferred by the constitution would meet with great opposition under all circumstances. He desired, therefore, to bring the struggle to a decision before the opposing elements should find time to consolidate their forces. The longer it was postponed the more difficult would be the victory; and the very non-exercise of these powers would be considered a tacit renunciation of them. Internal revenue (so-called) should not be monopolized by the states; for it was the element by which every individual citizen could be soonest brought to a consciousness of the national character of the Union, even in internal affairs, since it immediately affected the every-day life of every citizen.[1]

[1] "Other reasons co-operated in the minds of some able men to render an excise at an early period desirable. They thought it well to lay hold of so valuable a resource of revenue before it was generally preoccupied by the state governments. They supposed it not amiss that the authority of the national government should be visible in some branch of internal revenue, lest a total non-exercise of it should beget an impression that it was never to be exercised, and next that a thing of the kind could not be introduced with a greater prospect of easy success than at a period when the government enjoyed the advantage of first impressions, when state factions to resist its authority were not yet

These points did not escape the opposition. It was not to be ascribed to dissatisfaction with the excise imposition that a majority of the southern and western members of congress announced, even before the passage of the bill, an organized agitation to procure its repeal.[1] It was understood in both sections of the country that the contest really centered in the great constitutional question which, up to the time of the civil war, constituted the legal basis of every important internal struggle. In the debates bearing immediately on the question of excise, little was said of state rights and state sovereignty, for the reason that it was impossible to escape the express provision of the constitution. The struggle centered, however, with full consciousness on the part of the contestants, on the actual possession of a position, the great importance of which, for the conflict which followed between the sovereignty of the Union and the independence of the several states, was fully recognized. This was so obvious that it did not escape the observation even of foreigners.[2]

It was the profound significance of the struggle, as much as the ever-increasing boldness of the insurgents, which determined Hamilton, in the summer of 1794, to cause the administration to proceed at last with all the energy it could command. He considered that the time

matured, when so much aid was to be derived from the popularity and firmness of the actual chief magistrate." Hamilton, Works, IV., p. 231.

[1] Wharton's State Trials, p. 102. Contributions to American History, 1858, p. 127.

[2] The French ambassador, Fauchet, said in his celebrated dispatch No. 10, dated Oct. 31, 1794, which cost secretary Randolph his place and good name, that the whiskey rebellion was "indubitably connected with a general explosion for some time prepared in the public mind; but which this local and precipitate eruption would cause to miscarry, or at least check for a long time." The elements of the explosion he described as "the primitive divisions of opinion as to the political form of the state, and the limits of the sovereignty of the whole over each state individually sovereign." (I am acquainted with the dispatch only in the English translation.) Randolph's Vindication, p. 41.

had come to try whether the new constitution had really created a government.[1] Only a few counties openly defied the officers of the general government. If force were used against them they would either be left to themselves, and then it would be easy to overcome them; or the rest of the malcontents would make common cause with them, in which case the alternative of accepting anarchy or of giving immediate support to the government, would be placed before the people in such a manner that they could not fail to recognize it. If left to themselves much would be accomplished with little effort, and both the insurgents and their secret abettors would be struck at the same time. In any case the slow but deadly drifting towards anarchy would be brought to an end.

Hamilton was certain that the opposition might be quickly broken if the government should take a decided attitude towards the insurgents. He advised, therefore, that so large a force should be put on foot as would compel the insurgent counties to give up all thought of a contest, unless they received support from without. In this way, the authority of the government might be re-established without burthening it with the odium which always attends the shedding of citizen blood.[2] Washington followed Hamilton's advice, which proved to be right. Thirteen thousand militia were called for on the 7th of August, and their appearance sufficed to restore the insurgent districts to obedience.

The vials of gall which were now poured out on Hamilton's head demonstrated how heavily the blow was felt by those who in secret had fanned the fire. In their wrath,

[1] In his letter of Aug. 2, 1794, he says: "The very existence of government demands this course [calling out the militia to suppress the insurrection]."

[2] In the letter referred to above we read: "The force ought, if attainable, to be imposing, to deter from opposition, save the effusion of the blood of citizens, and secure the object to be accomplished."

they lodged against him the most contradictory charges. At first, they prophesied that the militia would refuse to obey orders. Then they foretold a civil war, the end of which would be the annihilation of the usurpers who had grasped at power. Now they said that the secretary of the treasury had magnified a mouse into an elephant in order to subserve his despotic aims. Next they ridiculed the foolish stupidity which imagined that obedience could be forced. And in the same breath they declared that the brutal compulsion of the insurgent counties had made their secession from the Union a certainty.[1]

Neither these prophecies nor charges would have been of any consequence, had they not contained a certain amount of truth. Washington did not ignore this any more than he allowed himself to be deceived as to the motives of their originators, or to be hoodwinked by their unbounded exaggeration. This, as well as the position of the parties who endeavored to persuade him to choose a policy of inactive delay and even of concession, explains why he hesitated so long to adopt a course which the government of any well-regulated state would have recognized three years earlier as the only right one. And this it is, too, which gave this tempest in a tea-pot so great a significance.

There was this much truth in the charges against Ham-

[1] "A separation which was perhaps a very distant and problematical event is now near and certain, and determined in the mind of every man." Jeff.'s Works, IV., p. 112. Jefferson himself feared that a violent disruption of the Union might follow. In the same letter to Madison we read: "The third and last [error] will be, to make it [the excise law] the instrument of dismembering the Union, and setting us all afloat to choose what part of it we will adhere to." It is very significant that simultaneously, among the adherents of the opposite party, it was said that the strife might end with the expulsion of the insurgent districts. Wolcott writes, July 26, 1794: "I trust, however, that they will be chastised or rejected from the Union. The latter will not, however, be allowed without a vigorous contest." Gibbs, Mem. of Wolcott, I., p. 156.

ilton, that judging from the number of the insurgents, a call for 4,000 or 5,000 militia-men, instead of for 15,000, would have sufficed.[1] But Hamilton was not so short-sighted as to base his calculation on these elements alone. It is all the more singular that this should have been supposed of him, because the suspicions entertained by his accusers, and shared in part by himself, as to the reliability of the militia, were not entirely groundless.[2] A portion of the militia of Pennsylvania had from the beginning taken part in the movement. When governor Mifflin was requested to call them out to suppress the insurrection, he refused to do so, on the ground that it was too bold a step. He expected that such a course would only strengthen the revolt, and questioned whether the militia would yield passive obedience to the orders of the government. And when the militia were in fact called out by the president, they obeyed the order in Pennsylvania with reluctance and hesitation. Mifflin himself was obliged to travel through the state and use his eloquence to secure its quota.

Moreover, Hamilton's accusers had lost all right to complain of the number of militia called for, since from the very beginning of the disturbances they had preached the impossibility of suppressing them. Their charges against the secretary of the treasury recoiled, therefore, upon themselves. Yet Hamilton's army was, according to them, the butt of the insurgents as well as the instrument of an insupportable despotism.[3]

[1] The number of 13,000 men called for was afterwards increased to 15,000. The number of men able to bear arms in the insurgent counties was estimated at 16,000.

[2] Hamilton writes to Sedgwick, February 2, 1799: "In the expedition against the western insurgents, I trembled every moment lest a great part of the militia should take it into their heads to return home rather than go forward." J. C. Hamilton, History of the Republic of the United States of America, VII., p. 278.

[3] "The information of our militia returned from the westward is uniform, that though the people there let them pass quietly, they were ob-

This mode of argumentation against the distasteful measures of a government is very usual among excited masses. What was most remarkable in the instance before us is that it was not used by the masses or by common demagogues and pot-house politicians, but by members of the government. Jefferson did not first avail himself of contradicting arguments after he had retired to private life. And Randolph, his successor in office, followed his example in this respect. Both were in part actuated by impure motives, and Jefferson at least was conscious that he had painted in colors altogether too dark — a mistake into which the advocates of a bad cause almost always fall. But on the other hand, both were in great part really convinced that their fears were well-founded. And this is as characteristic of these two personages, as of the circumstances of the time. How far the bond which knit together the different parts of the Union was from being an organic, that is, a really national bond is evident from the fact that two secretaries of state could doubt the ability of the general government to enforce a constitutional tax, although it was opposed by force only in a part of a single state.[1]

These doubts were honest ones; but Jefferson and his associates were again guilty of self-contradiction in the manner in which they turned them to account. They had systematically labored to educate the people in the faith

jects of their laughter, not of their fear; that one thousand men could have cut off their whole force in a thousand places of the Alleghany." Jeff., Works, IV., p. 112.

[1] In Randolph's opinion on Hamilton's resolution to call out the militia we read: "The moment is big with a crisis which would convulse the eldest government, and if it should burst on ours, its extent and dominion can be but faintly conjectured." He comes to the conclusion that the situation of the United States "banishes every idea of calling the militia into immediate action." He even went so far as to express a fear that the insurgents might call the English to their aid, and that a war with England and the disruption of the Union might be the result of an attempt at coercion.

that an impotent general government was a condition precedent of liberty. In so far as they succeeded in this, they had contributed to make the government of the Union impotent. If their apprehensions were well grounded, this was a fact which should have afforded them nothing but satisfaction. And to some extent they experienced this satisfaction and made no secret of it. But, at the same time, they made the weakness of the government their excuse and justification for the counsel they had given, that it should declare itself powerless against a handful of insurgents.

And here also honest conviction, self-deception, and unworthy motives were strangely intermixed. As partisans they rejoiced over the predicament in which the government was placed; as fanatical doctrinarians, they endeavored to argue away from their own minds and those of the world, the bitterness of these fruits of their teachings, while with conscious sophistry they attributed to those teachings a brilliant excellence; and as Americans they were ashamed of the contemptible spectacle exhibited by this three years' struggle of the federal government with the four western counties of Pennsylvania.

With some, as with governor Mifflin, the last feeling conquered, and all finally accommodated themselves to the accomplished fact of the suppression of the insurrection. It would not have been so easy for them to do this if they had not for some time experienced, to their terror, that it is a much easier thing to provoke a storm than to control it. Yet this can be said only of Gallatin, Findley, and a few others, who had participated directly in the movement, although they belonged to the upper classes of society. The rest of the leaders of the anti-Federalists denied with undisguised provocation the accusation that they had conjured up the storm and were responsible for having raised the question whether the government was able to cope with it. Hence they learned nothing from experience. They con-

tinued to justify and to defend the very thing which Hamilton regarded as the soul of the evil. The insurrection in itself was only of small significance. The real danger lay in the attitude of the rest of the people towards the question. If the remainder of the people were permeated with a sense of the necessity of the absolute sovereignty of the law, it not only would have been absurd to consider the success of the insurrection possible, but the government would have been compelled to take immediate and energetic steps to suppress it, even if it should itself have preferred a different course. This conviction, however, was not shared by more than half the people, and with a great portion of them it was altogether wanting, so far as the laws of the Union were concerned. This was the chain which bound the hands of the government so long, and the anti-Federalists forged it. In a state in which the people rule, the sovereignty of law is possible only as long as the people wills it. And the will of the people in the United States, in its relation to the general government, must necessarily have been just as strong or as weak as the national feeling and the recognition of the interest which the individual members of the Union had in national development. But the anti-Federalists had from the beginning striven against these two forces on principle and with all their power. Their way and Hamilton's, therefore, necessarily took from the first a divergent course; for the leading thought of Hamilton's policy was the creation of national interests.

Hamilton's proposition to establish a national bank had its source in the same great statesmanlike thought as the Assumption Bill, the Funding Act, and his tax laws, and met therefore with the same opposition.[1]

The opposition in this case, too, was based on the question of constitutionality. The Federalists argued from the

[1] 1791.

point of view of the statesman, and touched on the constitutional question only so far as it was necessary to refute their opponents. The anti-Federalists, on the other hand, touched the essential arguments in the case only lightly, and where they did they allowed themselves frequently to be involved in absurdities by their doctrinarianism.[1] The whole debate was conducted by them in a pettifogging manner. Even Madison, who delivered the most important opposition speech, scarcely rose to a higher plane. It was not indeed an easy matter, under the circumstances, to raise strong, statesmanlike objections; and the constitutional considerations had little weight, as they were of an exclusively negative character. The constitution did not expressly authorize the establishment of a bank; and the anti-Federalists now endeavored to prove that it was not "necessary" to the exercise of any of the powers expressly given.[2]

[1] Thus, for instance, Jackson, of Georgia, opposed the establishment of a bank because it would facilitate the borrowing of money by the government. Deb. of Congress, I., p. 287. But Jackson had not by any means reached the height attained by Jefferson. The latter was of opinion that by a single amendment to the constitution "the administration of the government" might be reduced "to the genuine principles of the constitution;" that is, by an amendment withdrawing from the general government the power to make loans. Jefferson to Taylor, Nov. 26, 1798. Jeff., Works, IV., p. 260. Another objection of Jackson's was that the bank would be of advantage only to the mercantile interests; he had never seen a bank-note in Georgia. (Deb. of Congress, I., p. 272). It is worthy of mention that he, as well as Madison, called attention on this occasion to the geographical separation of parties. Jackson closed his argument with the words: "Not a gentleman scarcely to the eastward of a certain line is opposed to the bank, and where is the gentleman to the southward that is for it?" Ibid., I., p. 287.

[2] In Art. I., Sec. 8, § 18, of the constitution, it is provided that congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," etc. Compare Gerry's speech on the bank question, Deb. of Congress, I., p. 300; and Marshall, in McCulloch v. Maryland, Wheaton's Rep., IV., pp. 414–422.

The anti-Federalists felt the weakness of this position, and they anxiously tried to find other grounds. This only made their cause worse. The states, they said, had authority to establish and to prohibit the establishment of banks. But they could not maintain state banks in opposition to a United States bank; hence the latter was unconstitutional, as the rights of the states could not be curtailed except where the constitution expressly allowed it.[1] Moreover the constitution prohibited the favoring of any particular place[2] but the place where the bank was located would undoubtedly have an advantage over all others!

These and similar objections bordered on the ridiculous. But no reasoning was too absurd not to find credulous hearers, when the rights of the states were alleged to be in danger, and the services of the old phantom "consolidation" were required. The politicians would not, in a matter of such importance, have dared to wage so strong a war of opposition, and could not have carried it on for ten years and have finally conquered if they had not had as a broad and firm foundation to work upon, the anti-national tendencies which prevailed among the people.[3]

It has already been frequently intimated that the preponderance of anti-national tendencies in the Union had its origin in the political and social development of the states, in their want of political connection before the Revolution, in the little intercourse, commercial and other, between them, and lastly in various differences in their natural situation. A rapid intergrowth of the several states

[1] Deb. of Congress, I., pp. 275, 285.

[2] Art. I., Sec. 9, § 6.

[3] Care must be taken not to be misled by the apparent conflict between what is here said and the Federalist programme. The anti-national tendencies of the Federalists were much weaker than those of the anti-Federalists. But if the Federalists supported Hamilton's measures, it by no means follows that the masses of them, or even all their leaders, adhered to his policy for the same reasons, or that they had fully understood his motives or his objects.

could not therefore take place, and continued violent collisions were unavoidable. But the purely American questions of this period were not yet of such a nature, that they suffice to explain the morbid passion characteristic of its internal conflicts. The French Revolution introduced from abroad an element which, independent of the actual condition of affairs and partly in conflict with it, kept excitement during many years at the boiling point.

The Revolution was at first hailed with delight by all parties in the United States. When, however, after Mirabeau's death, the impossibility of control and the mistakes of the helpless court transferred the preponderance of power to the radicals, and when the anarchical elements grew bolder daily, the Federalists began to turn away. The anti-Federalists, on the other hand, clung more closely to it than ever. The farther France proceeded, by the adoption of brutal measures, on the way of political idealism, the more rank was the growth in the United States of the most radical doctrinarianism; the more attentively the legislators of France listened to Danton's voice of thunder and to Marat's fierce cry for blood, the more boldly did demagogism in its most repulsive form rage in the United States.

In the autumn of 1791, Freneau established the *National Gazette*[1] in Philadelphia with the intention of neutralizing the influence of Fenno's Federalist *United States Gazette*. In the beginning it was content with denouncing Hamilton's financial policy and scourging John Adams because he was the presumptive successor of Washington. But in course of time it attacked the president himself.[2]

[1] The first number appeared Oct. 31.

[2] Washington writes, July 21, 1793, to Henry Lee: "But in what will this abuse terminate? For the result, as it respects myself, I care not. . . The arrows of malevolence . . . however barbed and well pointed, never can reach the most vulnerable part of me, though while I am up as a mark, they will be continually aimed. The publications in

Its wit degenerated into malice, and in lieu of a sharp polemic against the expediency of certain measures, it made the most malignant charges as to the motives and objects of its opponents. The most distinguished Federalists, it said, had always been a "corrupt squadron." Now the old calumny as to their "monarchical" tendencies was revived with increasing passion.[1] The "monarchical faction" became a shibboleth. The course of events in France lent the anti-Federalists special strength. The more undoubted the overthrow of the monarchy there became, the more was the party here upbraided to whom the sacred word "republic" was assumed to be a thorn in the flesh.

It was not demagogism only that moved the anti-Federalists to grasp these near and efficient weapons. Their intellectual and moral drunkenness was not merely feigned. They had grown more intoxicated over the French Revolution than over their own struggle for freedom. Therefore it was not only poet-politicians, like Freneau, and ambitious crosses between statesmen and demagogues, like Jefferson, who never tired of holding up to the eyes of the people the frightful spectre of a crown. Even men like Madison scented monarchy everywhere.[2] Nevertheless these fears were entirely ungrounded.

Freneau's and Bache's papers are outrages on common decency; and they progress in that style, in proportion as their pieces are treated with contempt, and are passed by in silence, by those at whom they are aimed." Wash., Works, X., p. 359. Compare Jeff., Works, IX., p. 164.

[1] The anti-Federalists, and Jefferson more than any of them, treated it always as a demonstrated fact, that Hamilton was enabled to carry his financial measures only by the purchase of several representatives. But the only evidence of the truth of this accusation is the boldness with which it was advanced. The demands which were made to point out who had been bribed, or to establish the general accusations in any manner, were never met.

[2] In a letter dated August 3, 1792, he writes to Randolph of the "doctrines and discourses circulated in favor of monarchy and aristocracy."

Friedrich Kapp rightly remarks that the colonists at the outbreak of the Revolution were by no means opposed, on principle, to a monarchical form of government.[1] Spite of this, however, they were even then republican to the core. The question of monarchy or republic was not here one which could be decided at pleasure. The republic was the only form of government that could be adopted under the circumstances, and it alone, therefore, could subsist. A form of government out of harmony with the manners and customs of a people cannot be lasting, and the manners and customs of the Americans were eminently and thoroughly republican. Their attachment to the royal house of England and to the English form of government, had become a habit the strength of which was in its age, and which, mistaking the real condition of things, had its support rather in the fancy than in the heart. It could prevail under the actual condition of things so long, only because monarchy in England was already little more than a form, since the real government was that of an aristocratic republic; and because all that was especially monarchical in the colonies was of even less account there than in England. Once the passive monarchy to which they had been accustomed was rejected by the colonists, it was impossible to reinstate it. The foundation on which it had rested was utterly destroyed, and hence all monarchical tendencies necessarily floated in the air.

The blind doctrinarianism of the anti-Federalists pre-

Rives, Life and Times of Madison, III., p. 196. In the Virginia resolutions drawn up by him in 1798, it is objected to the government of the Union that its policy tended "to consolidate the states by degrees into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or at best a mixed, monarchy." Elliot, Deb., IV., p. 528. Again in May, 1824, he spoke of the "monarchical spirit and partisanship of the British government which characterized Fenno's paper." Randall, Life of Thos. Jefferson, II., pp. 74, 75.

[1] Preussische Jahrbuecher, 1871.

vented their recognizing this. They ransacked the whole of history for analogies to prove the existence and the magnitude of the danger. The so-called monarchists, on the other hand, were satisfied that the examples adduced had no application to the given case. Their rational complaint was that the history of other peoples contained very little that could be used as an analogy at all.[1] And of all the analogies adduced, that seemed to them the most distorted which could see in monarchy the sword of Damocles that threatened the life of the republic.[2] This view was not only brought forward in the tribune and in the press as a defense against the charges of their opponents, but it finds frequent and emphatic expression in the confidential correspondence of the leading Federalists. Their crime was that they did not see the root of all political evil in the monarchical idea, and that they were convinced that, even under a republican form of government, a people might be politically, intellectually, and morally ruined. They, in many instances, painted things in too dark colors; but their speculations were based on the actual condition of affairs, not on abstractions, and they well knew that men could not be treated like dead figures or logical formulæ. If, therefore, they did not join in the thoughtless howl against monarchy in general, they recognized more clearly than did the anti-Federalists that a monarchy was impossible in the United States, and that if one were established it would only increase the evils which inspired them with so much serious alarm for the future of the republic.[3]

[1] "A case so anomalous as ours, so unlike everything European in its ingredients, its action, and thus far in its operation will baffle, for a long time, all the conjectures and prognostics that are drawn from other scenes." Fisher Ames, Works, I., p. 324.

[2] "I do not know of one man of sense and information who seriously apprehends any danger from monarchical opinions." Wolcott to Jed. Morse, Gibbs, Mem. of Wolcott, I., p. 190.

[3] "Monarchy is no path to liberty; offers no hopes. It could not stand; and would, if tried, lead to more agitation and revolution than

And even if they in theory preferred a constitutional monarchy to the republic, this unquestionable fact was so ever present to their minds that their acts and efforts were never in conflict with it.

If any one could rightly be called a monarchist in theory, it was Hamilton. In the Philadelphia convention he expressed himself convinced "that the British government was the best in the world," and that he almost doubted whether a republican government could be established over so extended a territory as that of the United States. He added, however, that he was sensible "it would be unwise to propose any other form of government."[1] This last conviction was not weakened by time, but grew stronger every day until the "unwise" became the unconditionally impossible.[2] His bitterest friend and most reckless accuser, Jefferson, at length bore witness to this, long after he (Jefferson) had left the political arena, and after Hamilton had been twenty years in his grave.[3]

anything else." Fisher Ames, Works, I., p. 324. Compare Quincy, Life of J. Quincy, p. 88.

[1] Elliot, Deb., V.. p. 202.

[2] "It is past all doubt that he [Burr] has blamed me for not having improved the situation I once was in [as quartermaster-general of the army], to change the government. That when answered that this could not have been done without guilt, he replied: 'Les grandes âmes se soucient peu des petits moraux;' that when told the thing was never practicable from the genius and situation of the country, he answered: 'That depends on the estimate we form of the human passions, and of the means of influencing them.'" Hamilton to Bayard. See the whole letter in Ham., Works, VI., pp. 419–424. By an oversight it is dated a year too early. In a letter of Sept. 18, 1803, on the plan of a constitution which he had laid before the Philadelphia convention, he says: "This plan was predicated upon these bases: 1. That the political principles of the people of this country would endure nothing but republican government." Ham., Works, VI., p. 558.

[3] Jefferson writes to Van Buren, June 29, 1824: "For Hamilton frankly avowed that he considered the British constitution, with all the corruptions of its administration, as the most perfect model of government that had ever been devised by the wit of man; professing, however at

The fact that no thought was farther removed from the minds of the Federalists than to engage in monarchical intrigues was of no practical value, inasmuch as the anti-Federalists would have recognized no proof of it as sufficient. They appreciated too highly the importance of the charges to withdraw them under any circumstance. This is evident from the name of Republicans, which they gradually assumed, thus claiming to represent the principles of republicanism with their whole heart. Besides, not feeling at home under the constitution, it was impossible to reason with them; and they became gradually more and more the victims of a morbid fancy. Carried away at first by the intoxication and the idealism of the French Revolution, then dropped, after the over-excitement, into a state in which apodictic impatience was mistaken for Catonian severity of principle, they fell after the spring of 1793 into the infinite depths of furious fanaticism. The arrival of the French ambassador, Genet, on the 9th of April, 1793,[1] at Charleston, was the signal for the outbreak of the commotion which for four years had been progressing secretly, only because an opportunity was wanting for a violent outburst.

Genet was an experienced diplomat, not destitute of talent, filled even to fanaticism with the radical doctrines of the Revolution, his whole thought and being satiated with the characteristically ingenuous pride of his nationality. He acted with the address and careless assurance which, in view of the feeling he found prevailing among the people, guaranteed him at first the greatest success. He was received with enthusiasm in Charleston,

the same time, that the spirit of this country was so fundamentally republican that it would be visionary to think of introducing monarchy here, and that therefore it was the duty of its administrators to conduct it upon the principles their constituents had elected." Van Buren, Political Parties, p. 434.

[1] De Witt, Th. Jefferson, p. 218, gives April 8 as the date.

and his journey to Philadelphia resembled a triumphal march. The Republicans fell victims with astonishing rapidity to the power of high-sounding phrases. The illusion that they were called to be the apostles of liberty stole away their senses. The ocean which lay between them and the old world did not permit the thought of preaching the gospel of equality and fraternity from the cannon's mouth, hand in hand with the French, to the oppressed and enslaved in Europe, to occur to them,[1] and propitious fortune had given them no neighbors who were in need of it. But the French nation's bloody work of redemption at home and abroad was destined to find the greatest moral support in the United States. And could it have been done, France would have received help from them without any scrupulous questionings concerning the duties which treaties and the law of nations had imposed on them towards other powers. This was precisely what Genet desired. The United States were to be an ally of France, and follow her directions. From the first, Genet assumed the character of a master and treated every impediment placed in his way as treason to the cause of liberty, in opposition to which there were no rights and no duties.

Washington had feared that sympathy for France might find expression in a dangerous manner, and had endeavored to prevent it by his celebrated proclamation of neutrality,[2]

[1] We read in the decree of the convention of Nov. 15, 1792: "The French nation declares that it will consider that people an enemy which refuses or abandons liberty and equality or which desires to preserve its princes or privileged classes, or to effect any composition with them." And in the decree of Nov. 19, 1792, it declared that it would lend its aid to any people who desired to regain their freedom.

[2] All the members of the cabinet agreed that a proclamation should be issued "for the purpose of preventing interferences of the citizens of the United States in the war between France and Great Britain." Jeff., Works, III., p. 591; Wash., Works, X., p. 534; Ham., Works, IV., p. 360. The word "neutrality," however, was not used, on account of the objection that a declaration of neutrality was beyond the powers of the ex-

dated April 22, 1793.[1] The greater publicity was given to this measure because Genet's course threatened to involve the United States in the most serious complications with England. The Republicans, however, continued to treat the proclamation as ill-timed and unnecessary,[2] and as if there were not the slightest doubt on the matter. An acrimonious contest was thus begun—a contest in which there would have been no need of an express declaration of hostilities, if a large portion of the people had not been affected by a political vertigo. It would have been more than foolish to look idly on, expecting a return of sobriety in due time. The blind violence against the administration was the best evidence how necessary it had been to take precautionary measures without delay.[3] The republican press raged so wildly and withal so successfully, that Hamilton himself considered it his duty to enter the lists for the administration. The weight of his blows was always so heavily felt by the republicans that they allowed only their best combatants to oppose him. And now Madison, under the

ecutive, and that it was better to avoid a declaration of neutrality in order to obtain in exchange the "broadest privileges" of neutral powers. Jeff., Works, III., p. 591; IV., pp. 18, 29, 30. Jefferson, however, rightly remarks: "The public, however, soon took it up as a declaration of neutrality, and it came to be considered at length as such." Washington himself uses the word repeatedly in his answers to the addresses which were directed to him on the question.

[1] Statesman's Manual, I., p. 46. Genet had not yet arrived in Philadelphia. His arrival in Charleston was first known in Washington, on the day on which the proclamation was issued. The news of his intrigues followed close upon this announcement.

[2] Letters of Pacificus, No. VII.

[3] Madison writes to Jefferson, June 19, 1793: "Every gazette I see (except that of the *United States*) exhibits the spirit of criticism on the Anglified complexion charged on the executive politics. . . . The proclamation was in truth a most unfortunate error. It wounds the national honor, by seeming to disregard the stipulated duties to France. It wounds the popular feelings by a seeming indifference to the cause of liberty." Rives, Life and Times of J. Madison, III., pp. 334, 335.

name of Helvidius, endeavored to neutralize the effects of Pacificus's seven letters.[1]

Jefferson, with the ingenuousness of a child, was caught in the clumsy snares of the French ambassador. The magnificent and high-sounding phrases in which Genet had tendered the hand of disinterested friendship to the sister republic in the name of the French nation, were wonderfully seductive to Jefferson's ears. In a single sentence: "In short, he offers everything and asks nothing," Jefferson rapturously and correctly condensed the whole of Genet's declaration.[2] It is characteristic of Jefferson's statesmanship, that he could accept such declarations as of any real value. There were reasons enough why France, at that time, should have been very anxious to make use of the United States to the utmost extent, in her own interest. Men like Jefferson even could adduce only one reason for the assumption that France was actuated by a disinterestedness never yet heard of in the history of diplomacy, namely, that she was a republic, and that so large-hearted a feeling was eminently becoming a republic. It was not to be assumed of a republic that it used only a meaningless phrase, insulting to the intelligence of those addressed, when it said: "We see in you the only person on earth who can love us sincerely and merit to be so loved."[3] Jefferson added, with a mixture of acrimony and proud pity for the shortsightedness and perversity of his opponents: "Yet I know the offers will be opposed, and suspect they will not be accepted."

[1] In Gideon's edition of the Federalist, 1818, the letters of Pacificus and Helvidius are given entire. The beginning of Madison's first letter is very characteristic: "Several pieces with the signature of Pacificus were lately published, which have been read with singular pleasure and applause by the foreigners and degenerate citizens among us, who hate our republican government and the French revolution."

[2] Jeff., Works, III., p. 563.

[3] Jeff., Works, l. c.

Genet illustrated the friendship of France in a manner which soon opened the eyes of even the unwilling Jefferson to the character of her ambassador, if not of the sister republic herself. He wrote to Monroe on the 14th of July: "His conduct is indefensible by the most furious Jacobin."[1] But he had himself too long occupied an ambiguous position in regard to this conduct of Genet to permit him to repel as an absurd calumny that he was himself a Jacobin. Genet informed the ministry of foreign affairs that at first Jefferson had given him certain very useful hints, hints which, coming to the ambassador of a foreign power from the secretary of state, were evidence of more than a want of tact.[2] In more than one instance in which Genet threatened most dangerously to compromise the United States, Jefferson hindered the action of the government to an extent that justified the charge that he played a masked part, and valued the friendship of France more than the honor of his own country.[3] On the 5th of July, that is, only nine days before the letter to Monroe above referred to, he indirectly, but with a knowledge of Genet's plan, advocated that an uprising against Spanish rule in Louisiana with the aid of the Kentuckians should be provoked.[4]

[1] Jeff., Works, IV., p. 20.

[2] "Dans les commencements, Jefferson, sécretaire d'Etat, m'a donné des notions utiles sur les hommes en place et ne m'a point caché que le senateur Morris, et le sécretaire de le trésorerie Hamilton, attachés aux intérêts de l'Angleterre, avaient la plus grande influence sur l'esprit du président, et que ce n'était qu'avec peine qu'il contrebalançait leurs efforts." Dispatch of Oct. 7, 1793. Documents historiques, No. VII., quoted by DeWitt, Th. Jefferson, p. 221.

[3] The most notable case was that of the Little Democrat. Compare Marshall, Life of Wash., II, pp. 270–273. Randall's exhaustive defense of Jefferson's mode of action on this occasion (Life of Jefferson, II., pp. 157–172,) is, like the whole book, written in too partisan a spirit. It is, however, true that the condensed account in Marshall is not altogether correct.

[4] Genet's dispatch of July 25, to be found in De Witt, Th. Jefferson,

If Jefferson and the greater part of the Republicans had their eyes opened it was due simply to Genet's folly.

What Chauncey Goodrich said a few years later was true even now: The French did not rest until they had cured the Americans of their "love-sickness."[1] When the authorities were getting ready to take energetic measures in the matter of the "Little Democrat," Genet threatened to appeal to the people, and soon carried out his threat. This was going too far. Even the Republicans, with few exceptions, had not yet fallen so low as to permit the French chargé-d'affaires to go unpunished, for formally calling on them to oppose the administration under his leadership, especially while Washington was at the head of it. The steps which his own government characterized as "punishable" and "criminal"[2] they would willingly have connived

p. 221. We there read: "M. Jefferson me parut sentir vivement l'utilité de ce projet; mais il me déclara que les Etats-Unis avaient entamé les négociations avec l'Espagne à ce sujet, qu'on lui demandait de donner aux Américains un entrepôt audessus de la Nouvelle-Orléans, et que tant que cette négociation ne serait pas rompue, la délicatesse des Etats-Unis ne leur permettrait pas de prendre part à nos opérations; cependant il me fit entendre quil pensait qu'une petite irruption spontaneé des habitans de Kentucky dans la Nouvelle-Orléans pouvait avancer les choses; il me mit en relation avec plusieurs députés du Kentucky, et notamment avec M. Brown." According to Jefferson's own account he warned Genet not to make formal enlistments in Kentucky or to issue commissions to officers, because by so doing he would be placing a rope about the people's necks. After which he continues: "That leaving out that article [in Genet's proposed address] I did not care what insurrections should be excited in Louisiana." He gave a letter of recommendation to Genet's agent, one Michaud—DeWitt gives the name Michaux—to governor Shelby. In this letter he spoke of him simply as "a person of botanical and natural pursuits;" but at Genet's request he changed the letter so that the governor would see something more in him. Ana., Jeff., Works, IX., pp. 150, 151.

[1] Goodrich writes to the elder Wolcott, Jan. 18, 1797: "Our country must get over its love-sickness for France, and if one degree of suffering and insult won't answer that valuable purpose, they will have madness enough to administer sufficiency." Gibbs, Mem. of Wolcott, I., p. 436.

[2] " . . la conduite puinissable . . . . les démarches et les

at. But they could not quietly consent that a foreigner should dare to menace, in the name of the people, a government established by the free choice of the people. That was not only to oppose the policy of the administration which they did not like, but to deride republicanism itself, and offer an insult to the whole country. The Republicans did not dare to blame the administration for demanding Genet's recall, and did not desire to blame it,[1] although the reaction in public opinion in favor of the government, once begun, was not confined to this special point. They might, indeed, easily yield here; because from the first they entertained the right view, that the masses of their adherents would soon plunge again into the same old stream.[2]

In the new congress which met on the 2nd of December, the Republicans had a majority in the house of representatives. Their candidate Muhlenberg was chosen speaker by a majority of ten votes. The administration therefore found itself from the start in a precarious position, the dif-

manoeuvres criminelles du citoyen Genet." Defargues, the then minister of French foreign affairs, to G. Morris. Sparks, Life of Washington, II., p. 358. France's answer to the expostulation of the United States would certainly have been very different if the Girondists had been still at the helm, and had persevered in their policy. It is established by documentary evidence that Genet received express instructions to involve the United States in the war. The whole plan on which he operated was prescribed to him in detail, and the responsibility, therefore, does not rest mainly on himself. Mémoire pour servir d'instruction au citoyen Genet; the advice of the conseil exécutif of Jan. 17, 1793; the dispatches of the minister of foreign affairs to Genet, of Feb. 24 and March 10, 1793. De Witt, p. 218.

[1] Genet, however, still found some defenders. Jefferson writes to Madison, Sept. 1, 1793: "He has still some defenders in Freneau and Greenleaf's paper, and who they are I know not; for even Hutcheson and Dallas give him up." Jeff., Works, IV., p. 53.

[2] "Hutcheson says that Genet has totally overturned the republican interest in Philadelphia. However, the people going right themselves, if they always see their Republican advocates with them, an accidental meeting with the monocrats will not be a coalescence." Jeff., Works, l. c.

ficulties of which were greatly increased by the tactics of the opposition, which were as subtle as they were unpatriotic. The principle which Jefferson wished to see made the leading one of the opposition: "to do nothing and to gain time,"[1] had been already, to a great extent, adopted by them. The resolutions of the administration were met by counter-resolutions which it was known the administration could not accept. When it was necessary that something should be done, a compromise was effected—often only after a long debate—and then the government was held responsible for the half-measures adopted. Moreover, the dangerous necessity of adopting themselves clear and decisive measures was avoided with great skill. In short, the opposition was in the highest sense of the word an opposition and nothing more. Wolcott describes the action of congress during this session in the following words: "Nothing very wrong has yet been done, though much has been attempted; on the whole, the session has reflected no honor upon the government of the country. Weakness, passion, and suspicion have been leading characteristics in the public proceedings."[2]

Jefferson's exit from the cabinet[3] was not a full compensation for this attitude of the house of representatives. Washington did not again try to realize an independent

[1] Jeff., Works, IV., p. 222.

[2] Gibbs, Mem. of Wol., I., 134.

[3] Jan. 1, 1794. Ch. Fr. Adams gives the reasons of Jefferson's retirement in the following words: "For Mr. Jefferson to continue longer in the cabinet in which his influence was sinking, was not only distasteful to himself, but was putting a restraint on the ardor of opposition and impairing the energies of his friends without any compensating prospect of good. He determined to withdraw; and his act became the signal for the consolidation of the party, which looked to him as its chief. Broad and general ground was now taken against the whole policy of the administration, and the arrows, shut up within the quiver, so long as he remained liable to be hit, were now drawn forth and sharpened for use even against Washington himself." Life of J. Adams, II, p. 152.

administration by taking the leaders of both parties into his counsel. But the attorney-general, Randolph, who succeeded Jefferson, was by no means a change for the better. His position from the very first had been wavering and uncertain, although as a general rule he sided with Jefferson. The Republicans therefore did not look upon him as unconditionally theirs, much less their leader. Washington could no longer claim with the same force as before, that so far as the constitution of his cabinet was concerned, he had done equal justice to both parties, and still he had by no means strengthened his cabinet. He had in fact jumped out of the frying pan into the fire. The greatest reproach that could be made against Jefferson during his course as secretary of state was his coquetry with France, a coquetry which bordered on intrigue. Randolph overstepped these limits. But before it came to light, a great revolution had taken place in public opinion.

The French government had completely disavowed Genet, and the new embassador Fauchet began his administration with moderation and tact.[1] Everybody was, therefore, soon ready to excuse France entirely, and to hold Genet personally responsible for the wrong that had been done.

England lent great aid to this revival of sympathy for France. Instead of furthering the change in the opinion of the American people by reciprocating it, and thus utilizing it for her own ends, she allowed herself to proceed still more recklessly in her mad and excited policy. The English order in council of the 6th of November, 1793, which forbade the commerce of foreign nations with the French colonies, was looked upon in the United States as a token of an unfriendly disposition, to such an extent that serious thoughts of the possibility of a war began to be entertained. On the 26th of March, 1794, congress voted

[1] Wash., Works, X., p. 401.

an embargo of thirty days, which was afterwards prolonged for thirty days more. Other measures, partly to place the country in a state of defense, and partly to provide for sufficient reprisals for any damage which might accrue to American citizens, were taken under consideration.[1] The news of the modification which the order in council of November 6 had received by the new one of January 8, 1794, allayed the excitement to some small extent. Clark of New Jersey proposed on the 7th of April, 1794, in the house of representatives, that the purchase of British manufactured goods and raw material should be forbidden until the western posts were surrendered and full compensation made for the losses which the Americans had sustained in consequence of the violation of their neutral rights. The house adopted[2] the resolution on the 21st of April in an amended form, and it seemed not improbable that it would be adopted by the senate also.[3] War would thus have been almost inevitable. Washington, therefore, resolved to send a minister extraordinary to England to make a last effort to bring about a peaceable solution of the differences between the two countries.[4] His

[1] Even here motives not the best came into play. John Adams writes to his wife on the 10th of May: "The senators from Virginia moved, in consequence of an instruction from their constituents, that the execution of the fourth article of the treaty of peace, relative to bona fide debts, should be suspended until Britain should fulfill the seventh article. When the question was put, fourteen voted against it, two only, the Virginia delegates, for it; and all the rest but one ran out of the room to avoid voting at all, and that one excused himself. This is the first instance of the kind. The motion disclosed all the real object of the wild projects and mad motions which have been made during the whole session." Life of J. Adams, II., p. 177. It is well known how since then the practice has increased of avoiding the responsibility of a vote by absence.

[2] By 58 against 38 votes. See the resolution, Deb. of Congress, I., p. 498.

[3] The vote in the senate at the third reading stood 13 to 13; the vote of the vice-president decided it in the negative. Life of J. Adams, II., p. 154.

[4] Wash., Works, X., pp. 403, 404. Life of J. Adams, II., p. 153.

choice fell upon chief-justice Jay, whose nomination was after some opposition, confirmed by the senate.[1]

Thanks to the statesmanlike moderation with which Jay went to work, his mission was successful. On the 19th of November, 1794, he drew up the treaty[2] of reconciliation, and on the 9th of March it reached Washington's hands. The senate ratified it by the constitutional majority of two-thirds, except Art. 12, which related to the commerce with the West Indies.[3] Washington, however, delayed to sign it because some of the provisions did not meet his approbation. This was highly acceptable to the extreme Republicans. They had begun their agitations against it even before its contents were known.[4] They were indisposed to come to any understanding whatsoever with England, because they thought it would have the effect of curtailing the moral and other support which they desired to see guaranteed to France. When, therefore, the indiscretion of a senator[5] had made the contents of the treaty public, a storm of opposition was immediately raised against it.

The American democracy here exhibited a phase of its character which has since been frequently observed. Fisher Ames rebuked the people for allowing themselves to be too much commanded.[6] The position which they had hitherto assumed in relation to France justified the reproach. But in proportion as they yielded too much to France they paid too little attention to England. In the case of the former their fancies led them to adopt an un-

[1] Three days before the adoption of Clark's resolution by the house, but after it had been adopted in committee of the whole.

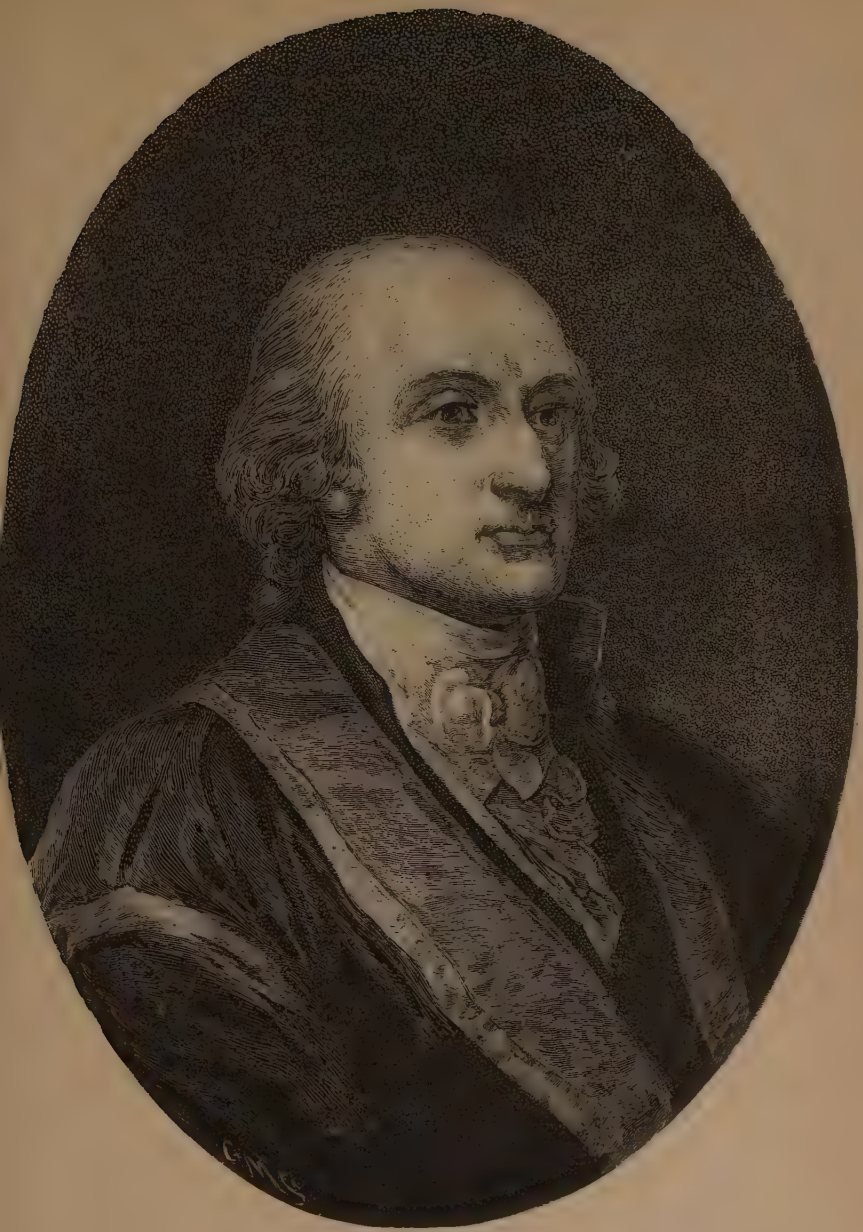
[2] Statutes at Large, VIII., pp. 116-129.

[3] June 24, 1795.

[4] Wash., Writings, XI., p. 513.

[5] Stevens Thompson Mason of Virginia.

[6] "We the people, are in truth more kickable than I could have conceived." To Wolcott, April 24, 1797. Gibbs, Mem. of Wolcott, I., p. 498.



JOHN JAY.

wise policy, which blunted their feelings for the honor and dignity of the state; in the case of the latter they yielded to their caprice even to the point of total forgetfulness of every political consideration. The question what kind of treaty the United States ought to have expected under the circumstances was one which the Republicans did not at all propose to themselves. While in internal affairs political wisdom had, in the course of years, degenerated into moral cowardice, here, where a treaty could, in the nature of things, be only a compromise between opposing claims, the very thought of a compromise was branded as a shameful barter of the national honor. The possibilities, with their various probabilities, were not weighed against one another, and no effort was made to ascertain whether the enforcement of the claims made by the United States was, under the circumstances, to be reckoned among the possibilities. The feeling of national honor, and the calm confidence in the national power, were distorted into sensitive haughtiness and presumptuous declaration. Where there should have been only sober examination, the irritated feelings of the people were artfully excited, even to the blindness of passion, and the dignity of statesman-like judgment was claimed for the vague feelings of the masses, now degenerated to the level of mere instincts. Assemblies of the people without any legal existence spoke as the "people," and deduced from the principle of the people's sovereignty their right to make recommendations[1] to the lawful authorities in the form of expressions of opinion, which often assumed a mandatory and even threatening tone. Moreover, the people delighted in demonstrations, which, besides being indecorous and out

[1] "Such errors are unavoidable where the people, in crowds out of doors, undertake to receive ambassadors, and to dictate to their supreme executive." J. Adams, on the 19th of December, 1793, to his wife. Life of J. Adams, II., p. 158.

of taste, must have been the occasion of great offense to England.[1]

The storm first broke out in Boston, New York and Philadelphia. From the time that the blessings of the constitution began to be felt, the lower strata of the population of the larger cities commenced to swell the ranks of the anti-Federalists. Sounding phrases and all the arts of the demagogue could here be made use of with greatest success. The plebs of the large cities have always furnished the best field for doctrinarianism. We find, therefore, that in the United States as elsewhere they had formed a coalition with the aristocratic south, before it had become peculiarly a slavocracy and before the masses, sunk in a degree to the level of the proletariat, had made themselves over to it entirely. The south was from the start the leading spirit of this alliance, and the only party that reaped any advantage from it.

The south also, was now the real home of the movement, although it first broke out in the large cities of the north, and was there apparently most violent.[2]

The reception given to the treaty cannot be fully explained by the existing relations between the United States and England. It was only in consequence of its Francomania that the opposition assumed the character of blind rage. This Francomania, however, was not so much one of the grounds of the separation of parties as one of the elements which caused that separation to find expression in a manner pregnant with great consequences. Such

[1] The treaty was burned in Philadelphia in front of the house of the English ambassador, Hammond, and in Charleston the people dragged the English flag through the mud in the streets. Gibbs, Mem. of Wolcott, I., pp. 218, 220.

[2] "The treaty has received a most violent opposition from a certain party in most of the great towns, but in the southern states the opposition is pretty general." Wolcott, to his father, Aug. 10, 1795. Gibbs, Mem. of Wolcott, I., p. 224.

was their antipathy against England that the majority of even the Federalists would, spite of the excesses of the French Revolution, have continued to lean more towards France, if their material interests had not bound them more firmly to England. In the southern states, either this was not the case, or they ignored that it was. Their policy in this question they looked upon, therefore, simply as a matter of sympathy or antipathy. In the commercial north, the dollar turned the wavering scales. Its interest saved it from swallowing the poison of the doctrinarians in quantities large enough to affect its vision where the national honor was concerned. When during the presidency of John Adams, the disagreement between France and the United States led to an interruption of diplomatic relations, a small part of the Federalists were in favor of war. From a war with France they expected, and not without some reason, that there would be no great injury to American commerce. By an increase of difficulty with England, on the other hand, the United States would gain very little at the best, while the eastern states would necessarily suffer a great deal therefrom.[1] There was little more needed to carry the struggle to the extent of a war;[2] and a war with England meant the ruin of the commerce of the eastern states. As early as 1793, when peace with England was endangered by Genet's machinations and their consequences, there were those in the New England states who, in no covert language, urged that a dissolution

[1] The exports to France and her colonies amounted in 1797 to $12,449,076; in 1798, to $6,968,996; in 1799, to $2,780,504; in 1800, to $5,163,833. The exports to Great Britain and her colonies in 1797 amounted to $9,212,235; in 1798, to $17,184,347; in 1799, to $26,546,987 and in 1800 to $27,310,289. Pitkin, A Statistical View of the Commerce of the United States of America, p. 216.

[2] Washington writes to Hamilton, Aug. 31, 1795: "It would seem next to impossible to keep peace between the United States and Great Britain." Ham., Works, VI., p. 33.

of the Union was preferable to a war with England.[1] Hence the geographical grouping of the friends and enemies of the treaty did not escape them; spite of appearances, which were at first deceptive. Stepping beyond the limits of the question immediately before them, they pointed to the division of the republic into two "great sections" and declared an understanding between them to be a condition precedent of the continuance of the Union.[2]

In the north the reaction soon set in. The mercantile community, which had been induced to join the opposition, had been either duped or terrorized. The farmers did not change their mind. When they finally gave expression to it, after all the questions pertaining to the treaty had been examined, they were decidedly in favor of it. In the south, on the contrary, there was little change of opinion, except among the merchants, and only among a part of them. Among the masses of the people the intense excitement was followed by a kind of lassitude, while the leaders became daily more violent in their attacks on the treaty and its supporters. Madison branded the Federal-

[1] "A war with Great Britain, we, at least in New England, will not enter into. Sooner would ninety-nine out of a hundred of our inhabitants separate from the Union than plunge themselves into an abyss of misery." Th. Dwight to Wolcott. Gibbs, Mem. of Wol., I., p. 107.

[2] Wolcott writes to Noah Webster, Aug. 1st, 1795: "We have everything to hope from the virtue and reason of one part of the community, and everything to fear from the vice and turbulence of another. It is, however, certain that the great sections of the United States will not long continue to be agitated as they have been. We must and shall come to some explanation with each other." Gibbs, Mem. of Wolcott, I., p. 222. It is evidence of the keenness of his insight that on this occasion he characterized slavery as the essential cause of the division, although it had no direct connection with the treaty. He writes on the 10th of August, 1795, to his father: "I am, however, almost discouraged with respect to the southern states; the effect of the slave system has been such that I fear our government will never operate with efficacy. . . Indeed we must of necessity soon come to a sober explanation with that people and know upon what we are to depend. It is impossible to continue long in our present state." Ibid, I., p. 224.

ists as the "British party," and charged them with having sacrificed "the most sacred dictates of national honor."[1] Jefferson was not ashamed to reproach Jay, the well-tried patriot and chief-justice of the United States, with being a "rogue."[2]

The contest in the press was conducted with an acrimony and an expenditure of energy such as has not been witnessed a second time since the adoption of the constitution. Hamilton again entered the lists with all the weight of his superior mind, and once more it was seen that no one could withstand his blows. The thirty-eight numbers of "Camillus"[3] were so forcible that even his bitterest enemy and his most jealous rival bore the highest testimony which he ever received to his intellectual greatness. Jefferson entreated Madison in the most imploring manner to accept the contest against the "colossus" of the

[1] Madison, Aug. 10, 1795, to Chancellor Livingston, of New York: "Indeed, the treaty from one end to the other, must be regarded as a demonstration that the party to which the envoy belongs, and of which he has been more the organ than the United States, is a British party, systematically aiming at an exclusive connection with the British government, and ready to sacrifice to that object as well the dearest interests of our commerce as the most sacred dictates of national honor." Rives, Life and Times of J. Madison, III., p. 511.

[2] Jeff., Works, IV., p. 120. In his own cautious way he uses the word only in a figure of rhetoric. His blindly-attached biographer therefore questions whether he really desired to apply the epithet to Jay in "any personal sense." Randall, Life of Jeff., II., p. 267.

[3] Hamilton, Works, VII., pp. 172–528. "The defense by Camillus was written in concert between Hamilton, King, and Jay. The writings on the first ten articles of the treaty were written by Hamilton, the rest by King, till they come to the question of the constitutionality of the treaty, which was discussed by Hamilton. . . . This I have from King's own mouth. It is to pass, however, for Hamilton's." J. Adams to his wife, Jan. 31, 1796. Life of J. Adams, II., p. 195. According to J. C. Hamilton, however, Hist. of the Rep. of the U. S. of Am., VI., p. 273, the original outline of the first twenty-two articles, and six others, are in Hamilton's handwriting; numbers 23 to 30, and 34 and 35 are by another hand, "with frequent alterations, interlineations, and additions by Hamilton."

Federalists, because all the written attacks of the Republicans fell to the ground before Hamilton's defense.[1] This concession was a three-fold compliment to Hamilton, since he,[2] as well as Washington[3] and the other most prominent Federalists, Jay himself included,[4] were by no means satisfied with the treaty, but only thought that, considering every thing, and spite of its many unpalatable provisions and its many defects, its adoption was less of an evil than its rejection.

The Federalists were the victors, but the struggle was a hard one. Washington considered it the most difficult and serious crisis of his administration.[5]

The crisis was at an end the moment this decision was made, so far, at least, as the principal question—the relations of the United States to Great Britain—was concerned. The questions not immediately involved continued still for a long time to keep the country in a state of excitement, and exercised no small influence on the internal political contests of the succeeding years.

It was France which again appeared as an evil spirit between the parties, and was the cause, first of their greater

[1] Jefferson, Works, IV. pp. 121, 122.

[2] Hamilton, Works, V., p. 106; VI., pp. 35, etc. Compare Gibbs., Mem. of Wolcott, I., pp. 223, 224.

[3] Washington writes to Randolph, July 22, 1795: "My opinion respecting the treaty is the same now that it was, namely, not favorable to it, but that it is better to ratify it in the manner the senate have advised, and with the reservation already mentioned, than to suffer matters to remain as they are, unsettled." Washington, Writings, XI., p. 36.

[4] Washington, Writings, XI., pp. 481, 482, App.; Life and Writings of J. Jay, IV., pp. 257–259.

[5] "To sum the whole up in a few words: I have never, since I have been in the administration of the government, seen a crisis which, in my judgment, has been so pregnant with interesting events, nor one from which more is to be apprehended, whether viewed on the one side or on the other." Washington, Writings, XI., p. 48. Compare Gibbs, Mem. of Wolcott, I. p. 327.

mutual opposition, and then of the permanent supremacy of the Republicans.

Washington remained true to his broad and conciliatory policy towards France, and looked upon the preservation or re-establishment of amicable relations as the main object to be secured, so far as other and higher considerations permitted it. When Gouverneur Morris gave offense to the committee of safety by the tenacity with which he adhered to Washington's policy of neutrality, and his recall was demanded, Washington yielded to the demand, although he was completely satisfied with the conduct of his ambassador. James Monroe was nominated as his successor, in order that not even the slightest doubt might be left that the administration still remembered the services of France during the Revolution, and would be ready to respect the lively sympathy which the people still entertained for it.

The convention announced its approval of these efforts towards conciliation by voting a public reception to Monroe, at which the latter and the president, Merlin de Douai, expatiated in extravagant and high-sounding phrases on the alliance of friendship and freedom between the two countries. Washington was, however, by no means satisfied with these proceedings. The answer of the secretary of state to the report of the ambassador was couched in reproving terms, because he had exceeded his instructions and made use of language not at all in keeping with the neutral attitude of the United States.[1]

The French authorities took the reserved conduct of the administration all the harder because Monroe's subsequent course was in complete harmony with the expectations awakened by his first appearance. He acted as if the administration had made him complete master of its discre-

[1] Washington, Works, XI., p. 110; Monroe, View of the Conduct of the Executive, p. 23.

tion, and recklessly used it to support the position assumed by the Republicans towards France and England. His want of tact at length assumed so serious a character that Washington was forced to recall him.[1] Although Monroe, at the time that his successor, Ch. C. Pinckney, reached France, was no longer in favor to the same extent as at first, the Directory invested the ceremonies attending his departure with a character very flattering to him personally. But the president's answer to Monroe's notice of his recall was only formally addressed to the ambassador. It was really directed partly to the administration and partly to the American people. Presumption, insolence, and sound were carried in the address to an extreme.[2] Nor did the matter stop with insulting words. Pinckney was advised that France would not receive another American ambassador until her grievances were removed.[3]

[1] Sept., 1796.

[2] We may here quote a passage to show what insults the anti-Federalists quietly permitted to be offered to them. Although the Americans are certainly republican in more than the name, they have always been, as much as the French, and more than any other European people, subject to the vertigo of republicanism. They would never have accepted such language from France if she had not been a republic. We give here the passage from the English translation, as the French original is not at hand: "France, rich in her liberty, surrounded by a train of victories, strong in the esteem of her allies, will not abase herself by calculating the consequences of the condescension of the American government to the suggestions of her former tyrant. Moreover, the French republic hopes that the successors of Columbus, Raleigh, and of Penn, proud of their liberty, will never forget that they owe it to France. They will weigh, in their wisdom, the magnanimous benevolence of the French people with the crafty caresses of certain perfidious persons who meditate bringing them back to their former slavery. Assure the good American people, sir, that like them, we adore liberty; that they will always have our esteem; and that they will find in the French people republican generosity which knows how to grant peace as it does to cause its sovereignty to be protected." Elliot, Diplomatic Code, II., p. 518.

[3] President's message to congress, May 16, 1797. Statesman's Man-

Among the grievances of France, Jay's treaty played the principal part. Monroe had done all in his power, but in vain, to procure a copy of it for the French government, before its fate was yet decided.[1] The manner in which France would have used so early a knowledge of the treaty may be inferred from the violence with which it was denounced, after its publication in Paris, both by her and by her ambassador in Washington.

Adet, who was made acquainted with the treaty before it had been made public, would perhaps have effected more by his remonstrances, had not the reports of the former French ambassador, Fauchet, which so gravely compromised Randolph, come to light.[2] But Adet was not discouraged by his first failure. If the ratification of the treaty which had taken place in the meantime could not be recalled, it might be used to influence the people in a manner favorable to the French. Adet, however, took Genet as his pattern, and like him, overshot the mark. It was now accepted with no better grace than formerly, that the ambassador published his official communications to the administration in the Republican newspapers at the same time that he made them,[3] for now as then it was looked upon as an appeal from the administration to the people. If, when the democratic societies were still in their bloom, and the blind enthusiasm for French license was little past its culminating point, the people were unwilling

ual, I., p. 108; State Papers, II., pp. 388–390, 397; Elliot, Diplomatic Code, II., p. 523.

[1] Wash., Writings, XI., pp. 508, 511; Monroe, p. 28; Monroe's letter to Jay, Jan. 17, 1795. Life of Jay, I., pp. 335, 336.

[2] The plan of this work does not permit us to enter more fully into this interesting question. The extent of Randolph's faults and the main motives of his action have never been fully ascertained. Gibbs, in his Memoirs of Wolcott, treats the question exhaustively, but with partiality. Randolph's written defense is a weak document and throws little light on the subject.

[3] Hildreth, Hist., of the U. S., IV., pp. 681-685.

to suffer such interference on the part of foreigners, they were naturally still less disposed to do so now.[1]

The principal reason for this unwise proceeding on the part of Adet, a proceeding which his former course gave no reason to expect, was evidently the desire to influence the impending presidential election.

How deep the roots of the differences between parties were, is evident from the fact that Washington was compelled to remain the chief target of the republican press so long as it was not yet known to the public at large whether he would decide to appear as a candidate for a third time or not. When by his farewell address[2] all doubt on this point was removed, the prospect was immediately changed. The result of the election was now exceedingly doubtful. There was no second man to whom the whole of the nation could be won over. The Federalists, in whose hands the guidance of the state had hitherto remained, although they had repeatedly had a minority in the house of representatives, could not bring forward a single candidate who could calculate on the unanimous and cheerful support of the entire party.

There still prevailed at the time a feeling among the people that the vice-president had a sort of claim to the succession to the presidency. But even apart from this, Adams would have been one of the most prominent candidates of the Federalists. The great majority of them soon gave him a decided preference over all other possible candidates. On the other hand, some of the most distinguished and influential of the Federalists feared serious consequences to the party and the country from the vanity and violence as well as from the egotism and irresolution

[1] John Adams writes Dec. 12, 1796: "Adet's note has had some effect in Pennsylvania and proved a terror to some Quakers, and that is all the ill effect it has had. Even the southern states seem to resent it." Life of J. Adams, II., p. 208.

[2] Sept. 17, 1796.

with which he was charged. But to put him aside entirely was not possible, nor was it their wish. They thought, however, to secure a greater number of electoral votes for Th. Pinckney, the Federal candidate for the vice-presidency, which, as the constitution then stood, would have made him president and Adams vice-president. Although this plan was anxiously concealed from the people, it caused the campaign to be conducted by the party with less energy than if the leaders has been entirely unanimous.

France was naturally desirous of Jefferson's success. This desire had its origin to a great extent in Adet's altered attitude since October. Wolcott asserted that Adet had publicly declared that France's future policy towards the United States would depend on the result of the election.[1] Some did not hesitate to say that, on this account, Jefferson should have the preference,[2] but on the more thoughtful Federalists it exerted the very opposite influence.[3]

There is no reason for the assumption that the issue of the election would have been different, had Adet behaved more discreetly. But his indiscretion certainly contributed to make the small majority expected for Adams completely certain, while Hamilton's flank movement in favor of Pinckney helped Jefferson to the vice-presidency.

The possibility that the president and vice-president

[1] "I have been informed in a most direct, and as I conceive authentic, manner, that M. Adet has said that the future conduct of France towards this country would be influenced by the result of our election." Wolcott to his father, Nov. 27, 1796. Gibbs, Mem. of Wolcott, I., p. 401.

[2] G. Cabot informs Wolcott of a conversation with Cutting in which the latter said that the Federalists had come to the conviction that "we must soothe France by making their favorite Jefferson president, or we must take a war with them." Gibbs, Ibid, I., p. 492.

[3] The elder Wolcott, one of the extremest and most influential of the New England Federalists, declared that if Jefferson was elected, which could be brought about only by French intrigue, the northern states would separate from the southern, and never again form a union with them, unless for military purposes. Gibbs, Ibid, I., p. 409.

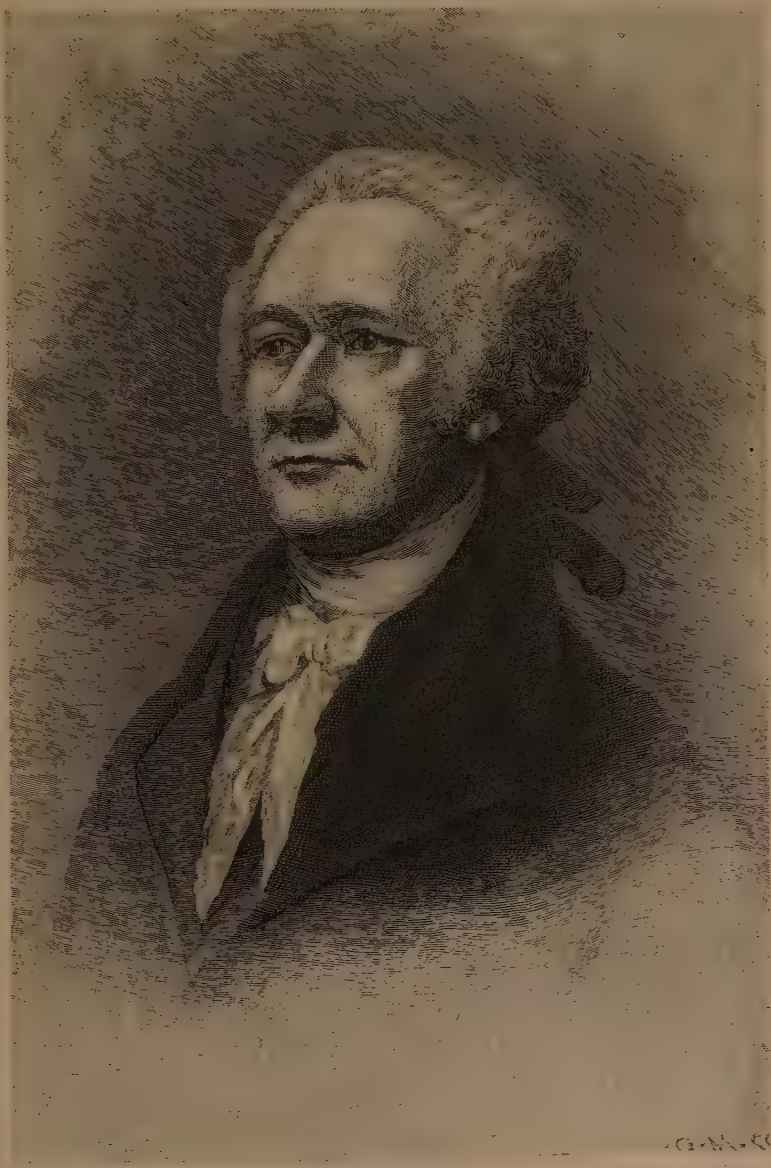
might be found in "opposite boxes" had inspired Adams with serious alarms.[1] Whether these were well-founded, the future alone could tell. The result of the election, however, left the country in a very serious condition. Washington's withdrawal removed the last restraint from party passion. Party lines were now closely drawn, and while the air was thick with events, it seemed as if a hair were sufficient, on the very first occasion, to turn the scales on the other side.

The Federalists had separated farther from the Republicans, but had not formed themselves into a sufficiently consolidated body. The more moderate and the extremists diverged from one another more and more. The former constituted the great majority of the party, but the latter numbered the men of the best talent among their members. Considering the small majority by which they had gained the election[2] it could not seem doubtful to them that the control of the country would be snatched from them if their internal differences were to grow in strength. And it was by no means improbable that this would take place.

Hamilton, who, spite of his retirement, had remained the leading spirit of Washington's cabinet, was unconditionally recognized by the extremists as their leader, and his character was not such as made compromise easy. He was enough of a statesman not to seek blindly after the desirable. He was content to endeavor to obtain the attainable. What the attainable was, however, he did not wish any one to inform him. Like all statesmen of the first rank, he could, once he had accepted the leadership, do nothing but lead; and could never in matters of importance be governed by a majority. But his genius alone

[1] Adams to his wife, Jan. 7, 1796: "It will be a dangerous crisis in public affairs, if the president and vice-president should be in opposite boxes." Life of J. Adams, II., p. 192.

[2] Adams received 71 electoral votes, one more than was necessary to a choice.



ALEXANDER HAMILTON.

could no longer assure him the leadership. It was necessary that a favorable revolution should take place in the condition of things to continue him in it. He had now to struggle not only against the hate of the Republicans and the little popularity he enjoyed among the masses of his own party. The official head of the party, with whom it was necessary to reckon on every question, was by no means well disposed towards him. Adams was jealous of Hamilton's influence, and owed him a grudge not entirely without reason, on account of the Pinckney intrigue. He was, besides, an uncertain character, strongly inclined to act according to the impulse of the moment, one whose natural firmness was excited by his vanity, arising from his power over other minds, to an almost stubborn egotism. Besides, the danger that, on this account, the dissensions in the party might produce an open rupture was greatly increased by the fact that Adams retained Washington's cabinet, which had been used to consider Hamilton their leader.

The feuds of the leaders were not, however, the only thing that seriously endangered the rule of the Federalists. Party changes had taken place among the masses which were not favorable to them, and which threatened to be of a lasting nature. New York, where anti-Federalist tendencies had hitherto predominated, was indeed won over to the Federalists; but this victory was due only to accidental and temporary causes. The number of their adherents in the southern states had been, on the other hand, noticeably diminished, and a great part of those who had thus far followed them began to waver. The two votes in Virginia and North Carolina which determined the result ultimately in Adams's favor were due only to the high esteem in which he was personally held, and to the memory of his services during the war of the Revolution. South Carolina had, it is true, given all her electoral votes to Pinckney, but had with equal unanimity voted for

Jefferson. Yet it was in Pennsylvania, which had always gone with New England, but which now, with one exception, voted for Jefferson and Burr, that the Federalists received the hardest blow. It could not be claimed here, as in New York, that it was only momentary and accidental causes which had produced this result. A great revolution in opinion had begun among the rural population of the northern states, and in Pennsylvania the change was completed, in consequence of various local causes, sooner than anywhere else. The impression produced by the meeting of the Philadelphia convention had disappeared by degrees, while the angry hate excited against England, and the opposition to commercial interests, had for a considerable time been preparing the way for the approximation of the small land-owners of the northern to the planters of the southern states.

All these elements combined suggested the thought that the victory of the Federalists was only a victory like that of Pyrrhus. The Republicans had good reason to congratulate themselves, and to look upon their partial success as a happy omen of an early and complete triumph. In proportion as they worked out of the position of a party of opposition to the policy of the Federalists and lost their excessive and ignorant enthusiasm for the French Revolution, they became a consolidated organization. The rhetoric of the doctrinarians did not exert over them any longer the same charm as in former years; but simultaneously with the abatement of their aimless enthusiasm, their reveries and vague theories began to assume a positive form.[1] Both their relative moderation and the gradual

[1] We may here cite one example to illustrate the strange manner in which it was sometimes attempted to apply the theories of the doctrinarians to practical politics. Tennessee had of her own accord separated herself from the territorial government, projected a state constitution without the authority of congress, and then pretended to be *ipso facto* a state. Chauncey Goodrich writes, in relation thereto, to the elder Wolcott:

transition from mere negation to a positive policy, had strengthened them internally and made proselytes to them. The instincts of the great body of the people had been in sympathy with them from the first, and they remained in the minority only because by their fervor of denial they recklessly abandoned all restraint, in consequence of which the conflict between the material interests of the country and the negative ends of their ideal policy appeared in too bold a light.

It may be that the Republicans would have even now obtained the upper hand if they had not been so unwise as to allow the questions of external politics to occupy the foreground to such an extent that they might be considered the main point of their policy. It did not escape the observation of those who saw deeper, that these questions were in reality but the points of support accidentally afforded for the gradual evolution of the essential differences, founded in the internal state of affairs. It has been already frequently remarked with what energy, even now and on the most various occasions, it was pointed out, that these differences divided the country into two geographical sections. It was reserved, however, for questions of foreign politics, to give rise to the occasion which should bring this fact out in such bold relief, that the abyss which yawned under the Union might be discerned for a moment.

"One of their spurious senators has arrived, and a few days since went into the senate and claimed his seat by virtue of his credentials from our new sister Tennessee, as she is called, and the rights of man." Gibbs, Mem. of Wol., I., p. 338.

CHAPTER IV.

NULLIFICATION. THE VIRGINIA AND KENTUCKY RESOLUTIONS.

Washington's presence made Adams's inauguration a moving spectacle. Adams remarked that it was difficult to say why tears flowed so abundantly.[1] An ill-defined feeling filled all minds that severer storms would have to be met, now that the one man was no longer at the head of the state, who, spite of all oppositions, was known to hold a place in the hearts of the entire people. The Federalists of the Hamilton faction gave very decided expression to these fears,[2] and Adams himself was fully conscious that his lot had fallen on evil days.[3]

It was natural that the complications with France should for the moment inspire the greatest concern. The suspicion that France was the quarter from which the new administration was threatened with greatest danger was soon verified by events.

[1] Gibbs, Mem. of Wolcott, I., pp. 461, 462.

[2] The elder Wolcott writes: "Mr. Adams will judge right if he considers the present calm no other than what precedes an earthquake. He can only contemplate, as far as respects himself, whether he will meet a storm which will blow strong from one point or be involved in a tornado, which will throw him into the limbo of vanity. That he has to oppose more severe strokes than as yet it has been attempted to inflict on any one, I am very sure of, in case our affairs continue in their present situation, or shall progress to a greater extreme." Ibid, I., p. 476.

[3] Adams writes in the account of the inauguration which he sent his wife: "He [Washington] seemed to me to enjoy a triumph over me. Methought I heard him say: 'Ay! I am fairly out, and you fairly in; see which of us will be the happiest.'" Life of J. Adams, II., p. 223.

The inaugural address touched on the relations between France and the United States only lightly. Adams had contented himself with speaking of his high esteem for the French people, and with wishing that the friendship of the two nations might continue. The message of May 16, 1797, on the other hand, addressed to an extraordinary session of congress, treated of this question exclusively.[1] The president informed congress that the Directory had not only refused to receive Pinckney, but had even ordered him to leave France, and that diplomatic relations between the two powers had entirely ceased. In strong but temperate language he counseled them to unanimity, and recommended that "effectual measures of defense" should be adopted without delay. It is necessary "to convince France and the world that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority, fitted to be miserable instruments of foreign influence, and regardless of national honor, character and interest." At the same time, however, he promised to make another effort at negotiation.

Pinckney, Marshall, and Gerry were chosen to make an effort to bring about the resumption of diplomatic relations, and the friendly settlement of the pending difficulties. Their efforts were completely fruitless. The directory did not indeed treat them with open discourtesy, but met them in such a manner that only new and greater insults were added to the older. Gerry, for whom Adams entertained a feeling of personal friendship, was most acceptable to the Directory, because he was an anti-Federalist. Talleyrand endeavored to persuade him to act alone. There can be no doubt whatever that Gerry had no authority to do so. Partly from vanity, and partly from fear of the consequences of a complete breach, he went just far

[1] American State Papers, II., p. 387, etc.; Statesman's Man., I., p. 107, etc.

enough into the adroitly-laid snares of Talleyrand to greatly compromise himself, his fellow-ambassadors, and the administration.[1] The want of tact was so much the greater, as Talleyrand, by three different mediators,[2] gave the ambassador to understand that the payment of a large sum of money was a condition precedent of a settlement.

In the early part of April, 1798, the president laid before the house of representatives all the documents bearing on this procedure.[3] If, even before his administration had begun, the general feeling of the country had been constantly turning against France,[4] now a real tornado of ill-will broke forth.

The anti-Federalists would willingly have given currency to the view that the ambassadors had been deceived by

[1] Charles F. Adams says in his biography of his grandfather: "Mr. Gerry, though he permitted the directory to create invidious and insulting distinctions, gave them no opening for advantage over himself." Life of J. Adams, II., p. 232. The facts do not justify this assertion. The president was himself very much offended by Gerry's conduct. And even the personal explanations afterwards made could only weaken, but not efface, the unfavorable impression which the president had received. It was not until Adams had begun to waver in his position on the French question, and had thus enlarged the differences between himself and his cabinet into a breach, that he found nothing to reproach Gerry with. In this case, as in many others, the judgment of Charles Francis Adams has been influenced by the desire to make his grandfather appear in the most favorable light possible. As, besides, his sources are almost never given, and the reader must be satisfied with the general assurance that they have been used conscientiously and exhaustively, this biography, on the whole a most excellent one, must be read with great care, especially in what relates to the actions and motives of Hamilton. Gerry appears in a somewhat too unfavorable light in Gibbs, Memoirs of Wolcott.

[2] The secretary of state, Pickering, suppressed their names in his communication to congress, and designated them as X., Y., Z.; the whole affair was, therefore, called the "X. Y. Z. correspondence."

[3] Am. State Papers, III., pp. 169–218.

[4] Gibbs, Mem. of Wolcott, I., pp. 493, 497, 499, 533, 542.

common cheats.[1] But their ranks grew so thin that they were obliged to proceed with great caution.[2]

While Jefferson had called the president's message of March 19[3] mad, he now declared: "It is still our duty to endeavor to avoid war; but if it shall actually take place, no matter by whom brought on, we must defend ourselves. If our house be on fire, without inquiring if it was fired from within or from without, we must try to extinguish it. In that, I have no doubt, we shall act as one man."[4] That such would have been the case will be scarcely questioned now. But although the anti-Federalists did not think of playing the part of traitors, and although they gave expression to their sympathy for France only in a suppressed tone, Jefferson was right when he said that "party passions were indeed high."[5] The visionaries became sober, and those who had been sober intoxicated. Hence the discord grew worse than ever.

A small number of the Federalists were anxious for war, and the rest of them considered it at least as probable as the

[1] Even Randall acknowledges that there could be scarcely any doubt that "X., Y., Z." were the authorized agents of Talleyrand. Life of Jeff., I., 387. Jefferson acted as if he were fully convinced of Talleyrand's innocence. Jeff., Works, IX., pp. 265, 271, 274, 367, 436. See the proof of the contrary, Tucker, History of the U. S., II., p. 71.

[2] "The Republicans were instantly reduced to a more feeble minority throughout the nation than they had been any day before since their first organization as a party." Randall, l. c. It was especially the small landed proprietors of the low country who flocked to the support of the administration. Washington writes to Lafayette, Dec. 25, 1798: "No sooner did the yeomanry of this country come to a right understanding of the nature of the dispute, than they rose as one man, with the tender of their services, their lives, their fortunes, to support the government of their choice, and to defend their country." Wash., Works, XI., p. 380.

[3] Am. State Papers, III., p. 168; Statesman's Manual, I., p. 116.

[4] Jeff., Works, IV., p. 241. See also the address to the people of Virginia which accompanied the resolutions of Dec. 24, 1798. Elliot, Deb., IV., p. 532.

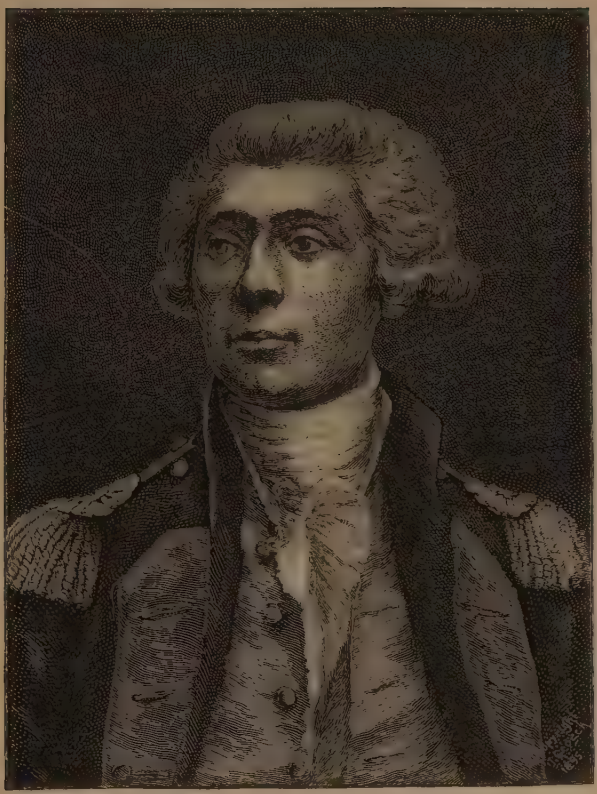
[5] Jeff., Works, l. c.

preservation of peace. Warlike preparations were therefore pushed forward with energy. But it was not considered sufficient to get ready to receive the foreign enemy; it was necessary to fetter the enemy at home. The angry aliens were to be gotten rid of while it was not yet too late, and the extreme anti-Federalists were to be deterred from throwing too great obstacles, at this serious time, in the way of the administration. In the desire to effect both of these things, the so-called alien and sedition laws,[1] which sealed the fate of the Federal party and gave rise to the doctrine of nullification, had their origin.

The plan of this work does not permit us to dwell on the contents of these laws. Suffice it to say, that, for a long time, they have been considered in the United States as unquestionably unconstitutional. At the time, however, there was no doubt among all the most prominent Federalists of their constitutionality. Hamilton even questioned it as little as he did their expediency. But he did not conceal from himself that their adoption was the establishment of a dangerous precedent. Lloyd of Maryland had, on June 26, introduced a bill more accurately to define the crime of treason and to punish the crime of sedition, which bill was intended for the suppression of all exhibitions of friendship for France, and for the better protection of the government. Hamilton wrote to Wolcott in relation to this bill that it endangered the internal peace of the country, and would "give to faction body and solidity."[2]

[1] Alien laws, June 25, and July 6, 1798; sedition law, July 14, 1798. Stat. at Large, I., pp. 570-572, 577, 578, 596, 597.

[2] "There are provisions in this bill, which, according to a cursory view, appear to me highly exceptionable, and such as more than anything else may endanger civil war. I have not time to point out my objections by this post, but I will do it to-morrow. I hope sincerely the thing may not be hurried through. Let us not establish a tyranny. Energy is a very different thing from violence. If we make no false step, we shall be essentially united; but if we push things to an extreme, we



MARQUIS de LAFAYETTE.

Lloyd's bill did not come up to be voted upon in its original form; but the alien and sedition laws were of themselves sufficient to realize Hamilton's fears. The supremacy of Massachusetts and Connecticut had become so unbearable to the south, that the idea of separation arose again in May. The influential John Taylor of Virginia thought "that it was not unwise now to estimate the separate mass of Virginia and North Carolina with a view to their separate existence." Jefferson wrote him in relation to this advice on the 1st of June, 1798,[1] "that it would not be wise to proceed immediately to a disruption of the Union when party passion was at such a height. If we now reduce our Union to Virginia and North Carolina, immediately the conflict will be established between those two states, and they will end by breaking into their simple units."

As it was necessary that there should be some party to oppose, it was best to keep the New England states for this purpose. He had nothing to say against the rightfulness of the step. He contented himself with dissuading from it on grounds of expediency. He counseled patience until fortune should change, and the "lost principles" might be regained, "for this is a game in which principles are the stake."

Considering these views, it is not to be wondered at, that in consequence of the alien and sedition laws, Jefferson began to see the question in a different light. We shall have something to say later on the question whether, and to what extent, he considered it timely to discuss the secession of Virginia from the Union. But he was soon satisfied that his opponents had bent the bow too nearly to the point of breaking to permit him to look upon further

shall then give to faction body and solidity." Ham., Works, VI., p. 307; Gibbs, Mem. of Wolcott, II., p. 68.

[1] Jeff., Works, IV., pp. 245-248.

patient waiting for better fortune as the right policy. It was no longer time to stop at the exchange of private opinion, and the declarations of individuals. The moment had now come when the "principles" should be distinctly formulated, and officially proclaimed and recognized. Not to do this, would be to run the risk of being carried away by the current of facts to such a distance that it would be difficult and perhaps impossible to get hold of the principles again. But if, on the other hand, this were done, everything further might be calmly waited for, and the policy of expediency again brought into the foreground. The protest was officially recorded, and so long as it was not, either willingly or under compulsion, as officially recalled, or at least withdrawn, it was to be considered as part of the record which might be taken advantage of at any stage of the case. Herein lies the immense significance of the Virginia and Kentucky resolutions.

Their importance is enhanced by the fact that Madison, who had merited well of the country, on account of his share in the drawing up and adoption of the constitution, and whose exposition of it is therefore of the greatest weight, was the author of the Virginia resolutions of December 24, 1798,[1] and by the further fact that Jefferson, the oracle of the anti-Federalists, had written[2] the or-

[1] They were adopted by the house on the 21st, but by the senate not until the 24th.

[2] It throws some light on the character of Jefferson that he gave G. Nicholas, who was to introduce the resolutions into the legislature of Kentucky, the "solemn assurance" that "it should not be known from what quarter they came." He himself gives this further information on the point: "I drew and delivered them to him, and in keeping their origin secret he fulfilled his pledge of honor. Some years after this Colonel Nicholas asked me if I would have any objection to its being known that I had drawn them. I pointedly enjoined that it should not." (Jeff., Works, VII., p. 299.) It was in December, 1821, that in answer to a question confidentially put by Nicholas's son, he first acknowledged that they originated with him.

iginal draft of the Kentucky resolutions of November 10, 1798.[1]

Although not in accord with chronological order, it is advisable to consider the Virginia resolutions first, for the reason that they do not go as far as the Kentucky resolutions. According to the testimony of their authors, the resolutions of both legislatures had the same source,[2] and there were special reasons why it was necessary to make the Virginia resolutions of a milder character.[3] Although a violation of chronological order, it seems, therefore, proper

[1] Randall, Life of Jefferson, II., p. 452, erroneously dates them Nov. 14. The house passed them on Nov. 10; the senate agreed to them on the 13th, and the Governor approved them on the 19th. Elliot, Deb., IV., p. 544. Randall relies principally on the erroneous date to support the assumption that Jefferson's assent to the modifying provisions of his draft was obtained.

[2] Jefferson says that the conference on the Kentucky resolutions took place between him and the two brothers Nicholas; and he adds: "I think Mr. Madison was either with us or consulted, but my memory is uncertain as to minute details." Jeff., Works, VII., p. 230; J. C. Hamilton, Hist. of the Rep. of the U. S. of America, VII., p. 264.

[3] Madison himself had well-founded doubts of the constitutionality of the contemplated procedure, and remarked, that on that account he had been induced to make use of "general terms" in the Virginia resolutions. He writes to Jefferson on Dec. 29: "Have you ever considered thoroughly the distinction between the power of the state and that of the legislature on questions relating to the federal pact? On the supposition that the former is clearly the ultimate judge of infractions, it does not follow that the latter is the legitimate organ by which the compact was made." J. C. Hamilton, Hist. of the Rep. of the U. S. of America, VII., p. 275. As a matter of course, Madison's constitutional doubts should have been applied also to the Kentucky resolutions. But Jefferson, in a letter to J. Taylor, of Nov. 26, Works, IV., p. 259, mentions a very important ground why it was necessary, especially in Virginia, to proceed with great caution. He writes: "There are many considerations dehors of the state which will occur to you without enumeration. I should not apprehend them if all was sound within. But there is a most respectable part of our state who have been enveloped in the X. Y. Z. delusion, and who destroy our unanimity for the present moment."

to consider these as the basis of the Kentucky resolutions, or rather as a lower round of the same ladder.

The paragraph of the Virginia resolutions of most importance for the history of the constitution, is the following:

"*Resolved*, That this assembly doth emphatically and peremptorily declare, that it views the powers of the federal government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil and for maintaining within their respective limits the authorities, rights and liberties, appertaining to them."

The legislature of Kentucky disdained to use a mode of expression so vague and feeble or to employ language from which much or little might be gathered as occasion demanded. In the first paragraph of the resolutions of the 10th of November, 1798, we read: "*Resolved*, . . that whenever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each state acceded as a state, and is an integral party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

Thus were the "principles" established. But in order that they might not remain a thing floating in the air, it

was necessary to provide another formula, by which the states might be empowered to enforce the rights claimed, or at least to find a word which would presumably embody that formula; and which was sufficient so long as they limited themselves to the theoretical discussion of the question. The legislature of Kentucky, in its resolutions of November 14, 1799, gave the advocates of state rights the term demanded, in the sentence:

"*Resolved*, That . . . the several states who formed that instrument being sovereign and independent, have the unquestionable right to judge of the infraction; and that a nullification by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy."

In later times the admirers of Madison and Jefferson who were true to the Union have endeavored to confine the meaning of these resolutions within so narrow limits, that every rational interpretation of their contents has been represented by them as arbitrary and slanderous. When about the end of the third and the beginning of the fourth decade of this century, the opposition to the federal government in Georgia, and especially in South Carolina, began to assume an alarming form, the aged Madison expressly protested that Virginia did not wish to ascribe to a single state the constitutional right to hinder by force the execution of a law of the United States. "The resolution," he wrote, March 27, 1831, "was expressly declaratory, and proceeding from the legislature only, which was not even a party to the constitution, could be declaratory of opinion only." In one sense, this cannot be questioned. In the report of the committee of the Virginia legislature on the answers of the other states to the resolutions of 1798, we read as follows: "The declarations are . . . expressions of opinion unaccompanied by any other effort than what they may produce on opinion, by exciting reflection."[1] But to concede that this was the sole intention

[1] Elliot, Deb., IV., p. 578.

of the resolutions of the 24th of December, is to deprive the words, according to which the states had the right and were in duty bound to "interpose" in case the general government had in their opinion permitted itself to assume ungranted power, of all meaning.

But it has never yet been denied that these few words express the pith of all the resolutions. More was claimed than the right to express opinions—a right which had never been questioned. If expression was not clearly and distinctly given to what was claimed, it was to leave all possible ways open to the other states to come to an agreement in all essential matters.[1]

Jefferson was in this instance less cautious than Madison, and his vision was more acute. He thought that the crisis of the constitution had come,[2] and therefore assumed a standpoint from which he could not be forced back to the worthless position adopted by Madison in his celebrated report of 1800.[3] Jefferson allowed it to depend on the further course of events whether force should be used, or whether only the right to employ force should be expressly and formally claimed. At first he was anxious that a middle position should be assumed, but a middle position which afforded a secure foothold. The legislature of Kentucky had done this, inasmuch as it had adopted that passage in his draft in which it was claimed that the general government and the states were equal parties, and in which it was recognized that the latter had "an equal right to judge" when there was a violation of the constitution, as well as to determine the ways and means of redress.

Madison,[4] and later, Benton,[5] as well as all the other ad-

[1] Madison in the letter to Jefferson, referred to above.

[2] Randall, Life of Jefferson, II., p. 451.

[3] Elliot, Deb., IV., pp. 546-580.

[4] Madison to Cabell, May 31, 1830. See Jefferson's Correspondence, III., p. 429, Randolph's Ed., and Madison's Correspondence, edited by Maguire, p. 286.

[5] Thirty Years' View, I., p. 148.

mirers of the "sage of Monticello," who were opposed to the later school of secessionists, have laid great weight on the fact that the word nullification, or anything of a like import, is to be found only in the Kentucky resolutions of 1799, which did not originate with Jefferson. This technical plea in Jefferson's behalf has been answered by the publication of his works. Among his papers two copies of the original draft of the Kentucky resolutions of 1798 have been discovered in his own handwriting. In them we find the following: Resolved, That when the general government assumes powers "which have not been delegated, a nullification of the act is the rightful remedy: that every state has a natural right, in cases not within the compact, [*casus non fœderis*] to nullify of their own authority all assumptions of power by others within their limits."[1]

That Jefferson was not only an advocate, but the father, of the doctrine of nullification is thus well established. It may be that Nicholas secured his assent to the striking out of these sentences, but no fact has as yet been discovered in support of this assumption. Still less is there any positive ground for the allegation that Jefferson had begun to doubt the position he had assumed. Various passages in his later letters point decidedly to the very opposite conclusion.

But all this is of interest only in so far as it corrects a misrepresentation of historical facts. It has no important bearing on the question itself. If, in fact, Jefferson had not employed the term nullification, it would be only a negative merit of the same significance as the negative merit of Madison that he used the indefinite expression "to interpose," instead of the definite expressions of the Kentucky resolutions. It was not the part of Madison to play the advocate for Jefferson in a case in which he had

[1] Jeff., Works, IX., p. 469.

to speak for himself as well. The "principles" presented and established by the three resolutions were the same in every respect; they differed only in their form, and each succeeding one was more in keeping with the nature of the matter than the preceding. The stone has been cast rolling on an inclined plane, and it rolls on.

If the practical measures proposed were not in harmony with the principles adopted, that fact might be, for the time being, of the greatest importance. But what assurance was there that they would never be in accord with them? The button on the sword's point is a protection as long as it covers it; but it may be removed at any moment, and the sword become as dangerous as if it had never been there. Besides, the three resolutions were also completely similar in this, that the proposed practical measures were in no case such as the principles advocated suggested. While the legislature of Kentucky employed the ominous word "nullification," it solemnly protested that it did not wish to offer resistance except in a "constitutional manner." The year before, it had even declared, that it desired only to urge the other states to "unite with this state to procure at the next session of congress a repeal of the unconstitutional and obnoxious acts."[1] Virginia, which had been so over-cautious, or rather so over-crafty, in the language employed in her resolutions, did not permit herself to make a similar declaration until 1800, and after the other states[2] had unambiguously condemned her course, while the legislature of Kentucky declared that it desired to request congress to repeal these laws, it "resolved" they were completely void and without force, and it asked the other states

[1] This paragraph is wanting in Jefferson's draft. It was substituted for the sentence erased in the 8th paragraph of the draft. The rest of it is the 9th paragraph of the resolutions adopted by the legislature.

[2] Delaware, Rhode Island, Massachusetts, New York, Connecticut; New Hampshire and Vermont. Massachusetts answered the resolutions with an exhaustive refutation. Elliot, Deb., IV., pp. 533-537.

to pass similar resolutions. And did not the legislature of Virginia make essentially the same demand when it declared it the duty of the states "to interpose" and added: "*Resolved*, that the general assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this commonwealth in declaring that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each for co-operating with this state in maintaining, unimpaired, the authorities, rights, and liberties reserved to the states respectively, or to the people"? And finally, was not nullification expressly declared by the legislature of Kentucky to be a constitutional remedy in 1799? In a word, as the "principles" advanced in the resolutions were the same, they led to the same logical conclusions, which were clearly expressed in the Kentucky resolutions, namely, the right of the states, through the organ of their legislatures, to "resolve" that laws of congress were unconstitutional, and therefore void and of no effect.

If the claim to this right were well founded, the constitution was, indeed, different from the articles of confederation in particulars; but the political character of the Union was essentially unchanged, and it was now, as then, a confederation of the loosest structure. If the right were acknowledged, the people were placed at the very point at which they had stood when Washington wrote: "We are to-day one nation, and to-morrow thirteen."[1] To the ex-

[1] Washington now again declared: "The constitution according to their [the anti-Federalists'] interpretation of it, would be a mere cipher." Washington, Dec. 25, 1798, to Lafayette. Works, XI., p. 378. Three weeks later he wrote to P. Henry: "Measures are systematically and pertinaciously pursued which must eventually dissolve the Union or produce coercion." Works, XI., p. 398. Very shortly afterwards the ultimate consequences of this interpretation of the constitution were boldly drawn. Tucker, whose edition of Blackstone's Commentaries appeared in 1803, writes, Vol. I., App., p. 175: "The federal government, then, appears to be the organ through which the united republics com-

tent that practice was in accord with theory, a mere mechanical motion would have again taken the place of organic life. Sooner or later even that must have ceased, for the state is an organism, not a machine.

As certainly as thistles spring from the seed of the thistle when it falls on the proper soil, so certainly must the consequences mentioned above follow under the given circumstances, from Madison's "to interpose." It is ridiculous to observe, how, in the United States, the use of this expression is declared to have been harmless, or even meritorious, while the word "nullification" is looked upon as the source of the whole evil. The apprentice in magic upbraids the spirits that they do not change their form and turn back into brooms when he pronounces the wrong charm. Here the spirits are conjured up, but their conjurers turn their backs upon them, after the airy beings have prepared for them the bath they prayed for, and reproach heaven and earth, but not themselves, when the flood rushes in thick volumes from their homes into the highway. As if the spirits ever, of their own accord, turn into brooms again when they have performed what they have been commanded!

It was reserved for a later time and another man to elaborate in detail the doctrine of nullification. John C. Calhoun solved the riddle on paper in such a way that the right of nullification appeared not only compatible with the existence of the Union, but as the condition of its free development, and of its strength. There was no time as

municate with foreign nations and with each other. Their submission to its operation is voluntary; its councils, its engagements, its authority, are theirs, modified and united. Its sovereignty is an emanation from theirs, not a flame in which they have been consumed, nor a vortex in which they have been swallowed up. Each is still a perfect state, still sovereign, still independent, and still capable, should the occasion require, to resume the exercise of its functions, in the most unlimited extent." See also Rawle, p. 302, etc.

yet to attempt to strangle the healthy human mind in a net of logical deductions. The "X. Y. Z. fever," as Jefferson expressed it, had made the anti-Federalists fear that the vehicle would roll over them. This fear drove them, after a little hesitation, to resolve to throw themselves between the spokes of the wheels. Perhaps they might succeed in bringing it to a stand, and might even cause it to move backwards. But they did not conceal from themselves that they might be prostrated in the attempt, or that the spokes might possibly be broken. If this became probable, and the choice were left with them, they were disposed to allow the vehicle to go to pieces. In other words, they had yet to offer an exhaustive constitutional defense of nullification; but they conceived its last practical result as one of various contingencies.

If a minority of the states should insist on the exercise of the alleged right of nullification, and if the majority should claim with equal decision the unconstitutionality of that right, the minority could consider secession only as a question of expediency. The general government would either be obliged to concede that every law of congress should receive the tacit approval of each state before having any force there, or it would be compelled to enforce such laws under all circumstances, and to employ force for that end if necessary. But if the general government should attempt to enforce a nullified law, such action on its part would, according to the doctrine of nullification, be a breach of the pact which held the states together. The state in question was no longer legally bound by the pact. It would depend entirely on its judgment in any given case to accept the breach of the treaty under protest, or if the general government was willing, to agree to a compromise with a reservation as to the ultimate decision of the legal question, or, remaining for the time being in the Union, to repel force by force, or finally, to announce its withdrawal from the Union, dissolved by the breach of the contract.

A part of the anti-Federalists were of the opinion that in the case before us, it might well be expedient to employ force. Of this there is ample documentary evidence. But under what circumstances they intended to have recourse to force, and whether in such a contingency they thought of immediate secession, cannot be determined with any certainty on account of the vagueness of the language they employed.

Jefferson, as was his wont, wrote in terms chosen with the greatest caution. But they are unambiguous enough to establish this much, that he considered an appeal to the sword or secession justifiable under the circumstances mentioned above; and that he thought it possible that, sooner or later, he would declare the one or the other of these steps to be advisable or necessary. He writes to Madison, November 17, 1798: "I enclose you a draft of the Kentucky resolutions. I think we shall distinctly affirm all the important principles they contain, so as to hold to that ground in future, and leave the matter in such a train as that we may not be committed absolutely to push the matter to extremities, and yet may be free to push as far as events will render prudent."[1] Nine days later he writes to J. Taylor: "For the present I should be for resolving the alien and sedition laws to be against the constitution, and merely void; and I would not do anything at this moment which would commit us further, but reserve ourselves to shape our future measures or no measures by the events which may happen."[2]

He assumed precisely the same position a year later. He now chose even fewer expressions of indefinite meaning. It was in his opinion "essentially necessary" that the legislatures of Kentucky and Virginia should issue a reply to the states whose legislatures had declared against

[1] Jeff., Works, IV., p. 25.
[2] Ibid, IV., p. 260.

the resolutions of 1798 and 1799, "in order to avoid the inference of acquiescence." On the 5th of September, 1799, he sent Wilson C. Nicholas a draft of such a reply. The second paragraph reads as follows: "Making firm protestation against the precedent and principle and reserving the right to make this palpable violation of the federal compact the ground of doing in future whatever we might now rightfully do, should repetitions of these and other violations of the compact render it expedient." He also insisted that expression of warm attachment to the Union should be made, and added: "we are willing to sacrifice to this everything but the right of self-government in those important points which we have never yielded, and in which alone we see liberty, safety and happiness; that not at all disposed to make every measure of error or of wrong a cause of secession, we are willing to look on with indulgence, and to wait with patience, till those passions and delusions shall have passed over," etc.

Madison did not wish that the reservation in the second clause should be adopted in the answer. Jefferson wrote on this subject to Nicholas: "From this I recede readily, not only in deference to his [Madison's] judgment, but because as we should never think of separation but for repeated and enormous violations, so these, when they occur, will be cause enough of themselves." How it can be claimed, in view of all these utterances, that Jefferson did not recognize secession and, as the inevitable and logical consequence thereof, a resort to the sword as a constitutional right, in the interpretation of the constitution, it is difficult to understand.[1]

[1] John Quincy Adams says in his eulogy on Madison: "Concurring in the doctrines that the separate states have a right to interpose in cases of palpable infractions of the constitution by the government of the United States, and that the alien and sedition acts presented a case of such infraction, Mr. Jefferson considered them as absolutely null and void, and thought the state legislatures competent, not only to declare,

Nothing more can be granted to Jefferson's defenders than that he was sincere when he declared that he would resort to "extreme measures" only with great reluctance. The same may be said of the other leaders of the anti-Federalists, almost without exception. But it is a falsification of the truth of history to pretend that they were now thinking exclusively of the establishment of "principles." Washington was of opinion that the peace of Virginia and of the Union was, "hastening" towards "a dreadful crisis."[1] So deeply was he penetrated by this conviction that he wrote a long letter to Patrick Henry imploring him to appear as a candidate for the legislature, in order to stem the current which was threatening ruin, by the whole weight of his experience and popularity.[2] The anti-Federalists, and their successors, the Republicans and the Democrats, have always asserted that he was ensnared by Hamilton and his associates, and terrified by phantoms conjured up only by their fancy and their inordinate desire to rule. This excuse is a poor compliment to pay; for although Washington was now on the brink of the grave, his perception was clear enough not to allow that to be argued away which was transpiring under his eyes. It was a fact that Virginia had not only dug the mine which she intended at some indefinite future time to use, but she also took thought for the morrow, and with busy hands carried the powder to it, even although she did not yet light the fuse.

Hamilton says in his very full letter to Colonel Dayton, speaker of the house of representatives, on the situation of the Union generally, and especially on the Virginia and Kentucky resolutions: "The late attempt of Virginia and Kentucky to unite the state legislatures in a direct resist-

but to make them so, to resist their execution within their respective borders by physical force, and to secede from the Union rather than submit to them, if attempted to be carried into execution by force."

[1] Wash., Works, XI., p. 391.

[2] Ibid, XI., p. 387, etc.

ance to certain laws of the Union, can be considered in no other light than as an attempt to change the government. It is stated, in addition, that the opposition party in Virginia, the headquarters of the faction, have followed up the hostile declarations which are to be found in the resolutions of their general assembly, by an actual preparation of the means of supporting them by force; that they have taken means to put their militia on a more efficient footing; are preparing considerable arsenals and magazines, and (which is an unequivocal proof of how much they are in earnest) have gone so far as to lay new taxes on their citizens."[1] He attaches full faith to these reports, and again, in January, 1800, declares it his conviction that the leaders in Virginia were ready to possess themselves of the government by force.[2] Randall, Jefferson's biographer, passes over these charges in silence, although he publishes the letter to Dayton and discusses it minutely. It must remain undecided whether this silence is to be regarded as a confession, or whether it means that the person of the complainant makes all refutation superfluous. The reader must be satisfied with the declaration that from Hamilton's "programme" for the session of congress he will discover "whether it was Jefferson or his opponents who attempted to misstate them [party aims] to posterity."[3]

When the state-rights party had long been in sure possession of power, a distinguished member of it from Virginia took care to let "posterity" know whether Ham-

[1] Ham., Works, VI., p. 384.

[2] "The spirit of faction is abated nowhere. In Virginia it is more violent than ever. It seems demonstrated that the leaders there, who possess completely all the powers of the local government, are resolved to possess those of the national by the most dangerous combinations; and if they cannot effect this, to resort to the employment of physical force. The want of disposition in the people to second them will be the only preventive. It is believed that it will be an effectual one." Ham., Works, VI., p. 416.

[3] Randall, Life of Jefferson, II., p. 458.

ilton's charges were calumnies and phantoms of his brain, which, according to the anti-Federalists, always burned with the fever of monarchy. It was a well-known fact that at the time that Washington saw a "dreadful crisis hastening," a large establishment for the manufacture of arms was set up in Richmond, in which, however, work was not commenced until some years later. John Randolph thought it due to the reputation of his state to remove every doubt as to the object of the erection of this establishment. He declared in 1817 in the house of representatives: "There was no longer any cause for concealing the fact that the great armory at Richmond was built to enable the state of Virginia to resist *by force* the encroachments of the then administration upon her indisputable rights, upon the plainest and clearest provisions of the constitution—in case they should persevere in their outrageous proceedings."[1]

It is not possible to say whether, or to what extent, these preparations were directly incited by Jefferson and Madison. The suspicion resting on Jefferson is obviously the greater, as Madison was from first to last more cautious in his steps. Nor can any definite answer be given to the question how far Madison recommended more moderate measures, or how far a different interpretation of the constitution lay at the foundation of these recommendations. Every move of his was made with anxious deliberation, and his native cautiousness, which sometimes degenerated into weakness and indecision, contributed beyond doubt to cause him to advise a milder and more tentative procedure. Besides, it may be that the internal struggle between his state and national patriotism, in both of which he was equally honest, hindered him from explaining to himself the "interpose." Perhaps he desired to leave open to

[1] Reminiscences of J. A. Hamilton, p. 39, according to the *National Intelligencer*.

himself as well as to the legislatures of the other states all possible ways of coming to a substantial agreement. It may be, too, that he entertained some real doubt whether the letter and spirit of the constitution quite justified the last conclusion in the Kentucky resolutions of 1799, drawn from the correct principles—correct in his opinion—which were the common basis of the Virginia and Kentucky resolutions. Whatever estimate of the relative weight of these two motives may be made, the rôle played by Madison in the constitutional conflict which culminated in 1798 and 1799 throws much light on the real character of the constitution itself and on the history of the development of the national spirit during the last decade. Much weight is not to be attached to the fact that Jefferson read the constitution in such a way, that the union of the states was in principle, perhaps a looser, and certainly not a firmer, one, than it had been under the articles of confederation.[1] It was not a difficult matter for Jefferson to act in opposition to his own theories; and it was still easier for him to reconcile himself to a contradiction between his words and his deeds. Ambition was the sovereign trait in his character. He was always ready to sacrifice much of his favorite theories to his feverish thirst for power and distinction, the more especially as his eminently practical instinct caused him

[1] Article 13 of the articles of confederation says: "Every state shall abide by the determination of the United States in congress assembled, on all questions which, by this confederation, are submitted to them." The opponents of the doctrine of nullification have interpreted this provision to mean that the laws of congress are absolutely binding on the states. In the constitution there are provisions which establish the supremacy of the laws of congress in a still more undoubted manner. If, spite of this, the doctrine of nullification could possibly and logically be deduced from it, it must have been much easier to deduce it from the articles of confederation, for several of the most important links in the proof are here expressly mentioned, whereas, in the latter, they can only be inferred from other provisions or words. Hence the indirect proof in opposition to the theory of nullification, from the 13th article of confederation, has no value.

often to doubt the tenableness of his ideal systems. Moreover, as he, partly from interest and partly because misled by his idealistic reveries, concealed his ambition under the mask of the greatest simplicity, stoical indifference, and even of disinclination to accept any political honor or dignity, so, too, his conscience was not precisely what would be called tender in the weighing and measuring of words, whether his own or those of others. Such a character could scarcely always resist the temptation to make ink and paper say what in his opinion they ought to say. His mode of thought, which was a mixture of about equal parts of dialectical acuteness and of the fanaticism of superficiality, as shortsighted as it was daring, made this a matter of no difficulty. Hence it is that not the slightest weight should be attached *a priori* to his interpretation of the constitution.

The direct contrary of this is true of Madison. His was not a character so thoroughly and harmoniously constituted and developed as Washington's. He, too, concealed the depth of his ambition under a plain and modest exterior. When it or his over-sensitiveness was wounded, he, too, could be unjust to his opponents. The violence with which the party struggle was conducted by degrees carried him, also, so far away that he played a more covert game than can be entirely justified by the excuse of political necessity. And when it was a question of opposing a measure in too great conflict with his own party programme, he could descend to the letter, and to petty quibbling, if he could not give his attack the necessary energy from the higher standpoint of the statesman. Spite of this, however, there was nothing of the demagogue about him. He is a purely constituted character, spite of the fact that his moral principles did not so unconditionally govern him as to leave his judgment entirely uninfluenced by his desires. It cannot be charged that he ever consciously approached the constitution with the intention of discovering in it a word which he might make to serve his purposes by di-

alectical legerdemain. Great weight must therefore be given to his exposition of the constitution; for he played a leading part in the Philadelphia convention; was afterwards the most conspicuous defender of the draft of the constitution in the Virginia convention; in conjunction with Hamilton and Jay wrote the Federalist; had a precise knowledge of the constitution and had familiarized his thought with the minutest details of its provisions. But it can be shown that he now read the constitution in such a way as to find in it something essentially different from what he had advocated in Philadelphia, and from what he thought he saw in the completed draft of it. If it be conceded that he did not read the constitution now so as to introduce anything new into it—and this will scarcely be denied to-day—these different interpretations can be explained only on two assumptions, that, leaving all sophistry aside, the terms of the constitution must admit of essentially different meanings, and that Madison's political proclivities and judgment had experienced a radical change since 1787 and 1788. This last point is important for the understanding of the history of the constitution, since the causes of the change in Madison's political tendency were not of a personal, but of a general, nature. Madison is in this respect only the most distinguished representative of a large fraction of the whole people.

Madison did not agree in 1787 with the opinion that had become current throughout the country, that the states were sovereign in the proper sense of the word. Said he on the 29th of June, in the Philadelphia convention: "Their [the states'] laws in relation to the paramount law of the confederacy were analogous to that of by-laws to the supreme law within a state."[1] And he added that the powers of the states, under the proposed form of government,

[1] Compare the preceding note.

would be still more hampered.[1] This language is very characteristic of his position. All his efforts at the time had their basis in this fundamental thought, and he followed out its logical conclusions with as much acuteness as practical insight. He repeatedly and urgently warned the country against the disastrous consequences of stopping half-way. He would not change the legal basis of the relation of the states to the Union, because it was not necessary to do so from his conception of the nature of the articles of confederation. He desired only to make the theory of the articles of confederation a living fact by means of the constitution. He would have the constitution give to the general government an express and definite legal remedy, by which every attempt of the states to curtail the legal and actual supremacy of the Union could be nipped in the bud.

Even before the meeting of the constitutional convention he writes to Edmund Randolph:[2] "Let it have a negative in all cases whatsoever, on the legislative acts of the states, as the king of Great Britain heretofore had. This I conceive to be essential, and the least possible abridgment of the state sovereignties. Without such a defensive power, every positive power that can be given on paper will be unavailing."

During the course of the convention he returns again and again to this point, insisting upon it as "absolutely necessary to a perfect system," and from first to last does not deviate by a hair's breadth from his original demand. He declares, on the 8th of June: "But in order to give the negative this efficacy, it must extend to all cases. A discrimination would be only a fresh source of contention between the two authorities. In a word, to recur to the illustrations borrowed from the planetary system, this

[1] Elliot, Deb., V. p. 256.
[2] April 8, 1787. Elliot, Deb., V., p. 108.

prerogative of the general government is the great pervading principle that must control the centrifugal tendency of the states, which without it will continually fly out of their proper orbits, and destroy the order and harmony of the political system."[1] And when the convention finally adopted the draft without any provision of this kind, he again declared that it "alone could meet all the shapes which these [the injurious acts of the states] should assume."[2] We must measure the change in his personal views on the conditions precedent of a powerful commonwealth, with a capacity for life and built on a federative foundation, by these expressions. But this is not saying that the change in his personal views influenced his interpretation of the constitution, or, if so, to what extent. Our judgment on this point must depend upon how far he considered his main object to be attained in 1787 and 1788, spite of the fact that he was not able to secure an unlimited negative to the government of the Union.

The later school of Calhoun repeatedly appealed to a word used by Madison in the constitutional convention, to prove that even those who most strongly advocated a "consolidation" of the states did not intend to give the federal government the power to use force in order to compel obedience on the part of a state.

During the debates on the clause authorizing the use of the power of the whole nation against a delinquent state, he remarked: "The use of force against a state would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound."[3]

But this passage must not be separated from the context if its meaning would be rightly understood. Madison in-

[1] Elliot, Deb., V., p. 171.
Ibid, V., p. 539.
[3] Ibid, V., p. 140.

troduced his remarks with the declaration that "the more he reflected on the use of force the more he doubted the practicability, the justice, and the efficacy of it," and at the close he expressed the hope that "such a system would be framed as would render this resource unnecessary." The issue of the question, it seemed to him, should be determined by its expediency. He did not contest the right of the federal government to defend not only its existence but its rights with force; but he doubted the advisability of making the use of this extreme remedy necessary, and the possibility of applying it with success. Hence he desired that the general government should have the absolute veto, for he could discover no third means; and that congress should have power to "control" the states was a question of which he entertained no doubt. Indeed, he saw the only danger in the usurpation of the states, for even if "a tendency of the general government to absorb the states" should appear, it could, in his opinion, be attended by no fatal consequence.[1] The veto was, therefore, the mildest means which could be discovered to prevent the evil which had grown out of the unconstitutional pretensions of the state governments. "The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the only remedy would be an appeal to coercion. Was such a remedy eligible? Was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts, abetted, perhaps, by several of her neighbors? It would not be possible."[2]

Madison may have been right in thinking that the employment of force against a state would be impossible at the time, and that hence it would be necessary to give the general government a peaceable means to check any at-

[1] Elliot, V. p. 222.
[2] Ibid, V., p. 171.

tempt at revolt before the agitation should become so intense, and extend to a circle so large, that the authority of the federal government would be seriously endangered. But it is surprising that he, and with him all the distinguished members of the convention, should have been so obstinate in declaring the veto to be the only means by which this end could be attained. The debate had progressed a great way before he gave his decisive reasons for this and at the same time clearly declared to what constitutional means congress would be limited without such a provision. Said he on the 17th of July: "They [the states] will pass laws which will accomplish their injurious objects before they can be repealed by the general legislature, or set aside by the national tribunals."[1] With the exception of the unambiguous prescription of the legal means, the only essential difference between the absolute veto and the power of resistance against the encroachments of the states at the command of the federal government, according to the form of constitution favored by the convention, is the element of time. The extension of the veto power over the states, which he proposed, would always at once prevent, in cases of urgent need, a law which violated the constitutional prerogatives of the federal government from coming into force. But if the veto were withheld, delay would be inevitable, and delay could only mean giving the seed of an insignificant disagreement time to ripen into open rebellion.

In the Federalist he advocated the same view. He says, however: "But ambitious encroachments of the federal government, on the authority of the state governments . . . . would be signals of general alarm. Every state government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the

[1] Elliot, Deb., V., p. 321.

whole. The same combination in short would result from an apprehension of the federal, as was produced by the dread of a foreign yoke; and unless the projected innovations should be voluntarily renounced, the same appeal to a trial of force would be made in the one case as was made in the other."[1] But he does not speak here of a right of the states, but only mentions the probability of a fact. This is evident from the comparison drawn. The forcible resistance of the states to the general government might be as justifiable as the forcible resistance of the colonies to England; but in law, it would be, in this case as in that, a revolution and not a mode of procedure warranted by the constitution. In the one case as in the other, there would have been but a naked fact presented, the fact, namely, that the question had been taken out of the domain of law and brought before the tribunal which is the *ultima ratio* of every people and every age. Madison leaves no doubt as to what, in contrast with these actual remedies, were the legal remedies belonging to the states. "In the first instance," he says, "the success of the usurpation will depend on the executive and judiciary departments which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people, who can by the election of more faithful representatives annul the acts of the usurpers."[2] Here there is nothing said of the duty of the states "to interpose." It is conceded that the general government has the exclusive right of decision, and the only way to reverse this decision is to labor to the end that, at the time appointed by law, other persons with different views may be entrusted with it. And how, indeed, could a constitution which accorded to the states other means of defense, be advocated by the man who condensed the knowledge he had learned from history into these words:

[1] Federalist, XLVI.
[2] Ibid, XLIV.

"The important truth which it unequivocally pronounces in the present case is, that a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil policy, by sustaining violence in place of law, or the destructive coercion of the sword in place of the mild and salutary coercion of the magistracy"?[1] The saying of John Quincy Adams already quoted, "that the constitution itself had been extorted from the grinding necessity of a reluctant people," will now be better understood.

[1] Federalist XX.

CHAPTER V.

THE PRESIDENTIAL ELECTION OF 1801. THE FALL OF THE FEDERALIST PARTY. JEFFERSON AND THE PURCHASE OF LOUISIANA. THE BURR AND FEDERALIST INTRIGUES.

The Virginia and Kentucky resolutions produced no further immediate consequences. The recognized leaders of the anti-Federalists or Republicans had given their interpretation of the constitution and of the Union created by it. Their declarations remained a long time unused, but also unrecalled and unforgotten. The internal contests continued and their character remained the same. The revolution in the situation of parties now necessitated a change of front on both sides, and for a time also the battles between them were waged over other points and in part in another way.

The next collision was an actual struggle for supremacy. An inadequate provision of the constitution alone made this battle a possibility to the Federalists; but the struggle over the question of the constitution was after all considered only as a mere accidental collateral circumstance.

The Republicans had won the presidential election by a majority of eight or nine electoral votes. Their two candidates, Jefferson and Aaron Burr, had each received seventy-three votes. They intended that Jefferson should be president and Burr vice-president. Spite of this, however, they gave both the same number of votes, either not to endanger Burr's election, or because he became a candidate only on that condition.[1] This was, considering Burr's want

[1] Wolcott asserted that Burr proposed this condition and that it was accepted by prominent Republicans. Gibbs, Mem. of Wolcott, II., p.

of principle, and the boldness of his character, a dangerous experiment. Judge Woodworth charged that Burr had won over one of the electors of New York to withhold his vote from Jefferson, and that this was prevented only by the fact that the other electors of the state had discovered it in time.[1] If this charge be well-founded, it was by mere accident that the country escaped electing a man president whose name had never yet been connected with the presidency by any party. But be this as it may, the danger that the bankrupt, foolish voluptuary, for whom no means was too low to carry out the adventurous plans of his daring and mad ambition, should be made chief of the republic, was by no means removed.

If an equal number of electoral votes should be cast for two or more candidates, the house of representatives would have to elect one of them to the presidency. In this case, the votes would be cast by states, and it would be necessary that a majority of all the states should vote for one of the candidates in order to have a valid election. The Federalists had a majority in the house of representatives, but voting by states they could control only one-half the votes. This was just sufficient to prevent an election.

No one denied that the majority of the people, as well as the republican electors, desired to make Jefferson president. But party passion had reached such a feverish height that the Federalists resolved, spite of this, to plant themselves on the letter of the constitution, and to hinder

488. Randall, Life of Jefferson, II., p. 573, calls this an absurd statement, but produces no proof therefor, except a letter of Jefferson's dated Dec. 15, 1800, to Burr, in which he intimates that he expects to receive a larger number of votes. J. C. Hamilton, Hist. of the Rep. of the United States, VII., p. 425, gives, however, good grounds for the assumption that Jefferson at this time was aware of the equality of the vote. A letter (Ibid, VII., p. 424) from Madison to Monroe, quoted by Hamilton, tends rather to prove than to disprove that such a promise had been made in favor of Burr.

[1] J. C. Hamilton, VII., pp. 424, 425.

Jefferson's election. The possibility of electing their own candidates[1] was completely excluded by the constitution. They could therefore do nothing except to obtain for Burr a majority of the votes of the states, or prevent an election. In case no president was elected by the states, they thought of casting the election on the senate. The senate was to elect a provisional president—from among the senators or not[2]—who then might be declared president of the United States. Such a proceeding could not be justified by any provision of the constitution; the case had not been provided for at all.[3] It is impossible to say whether this is the reason why the plan was soon dropped; certain it is, however, that Gibbs's statement that such a plan never existed is incorrect.[4]

After some hesitation they resolved to try to elect Burr. Only six states, it is true, voted for him, but it was necessary to win over only four votes[5] in order to guarantee him the legal majority of nine states.

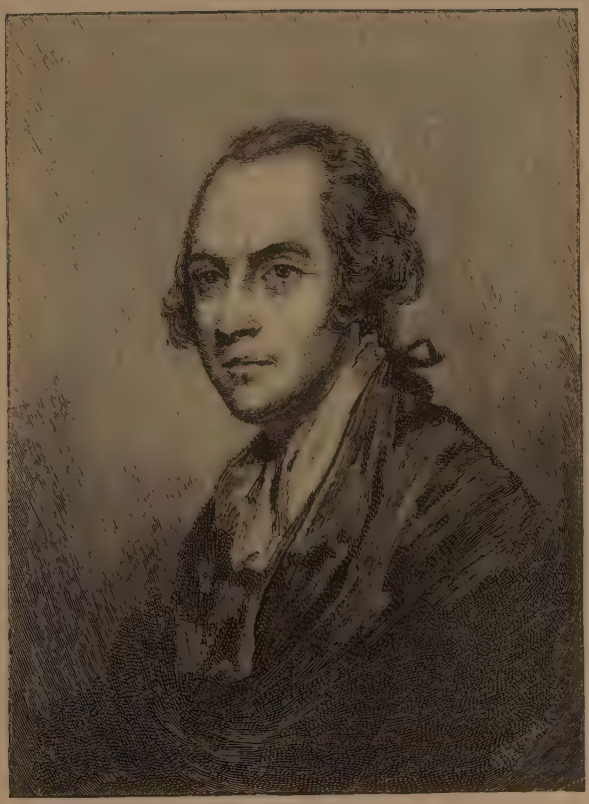
[1] Adams and Pinckney.

[2] They thought, for instance, of Chief-justice Marshall.

[3] It is impossible to understand how, spite of this, Adams could write: "I know no more danger of a political convulsion, if a president *pro tempore* of the senate, or a secretary of state, or speaker of the house, should be made president by congress, than if Mr. Jefferson or Mr. Burr is declared such. The president would be as legal [!] in one case as in either of the others, in my opinion, and the people as well satisfied." Adams, Works, IX., p. 98.

[4] Mem. of Wolcott, II., p. 98.

[5] Bailey and Livingston, of New York, Lynn, of New Jersey, and Dent, of Maryland. New Jersey and Maryland gave him an equally divided vote. Lynn inclined towards the Federalists, and Dent was a decided Federalist. The two representatives from New York named above were not considered very particular friends of Jefferson. The assumption that, under certain circumstances, a majority might be obtained for Burr does not seem to be quite as absurd as Randall represents it in his life of Jefferson. Life of Jeff., II., p. 605. Its probability is indirectly increased by the fact that the Federalists, who alone decided the issue in favor of Jefferson, drew upon themselves the suspicion of corrupt influence. See J. C. Hamilton, Hist. of the Rep. of the U. S. of



AARON BURR.

The prospect of the success of both plans was at least great enough to inspire the Republicans with serious fear. Jefferson had written on the 15th of December to Burr that "decency" compelled him to remain "completely passive" during the campaign.[1] But now he considered the situation so serious that he thought himself no longer bound by "decency." He personally requested Adams to interfere by his veto, if the Federalists should attempt to turn over the government, during an interregnum, to a president *pro tem.* Although he declared that such a measure would probably excite forcible resistance, Adams refused to be guided by his advice.[2]

Madison proposed another means of escape. He thought that an interregnum until the meeting of congress in December, 1801, would be too dangerous; Jefferson and Burr should therefore call congress together by a common proclamation or recommendation. This step could no more be justified by any provision of the constitution than an interregnum under a provisional president. Madison himself conceded that it would not be "strictly regular."[3] But the literal interpretation was presumably the alpha and omega of the political creed of the Republicans. Spite of this the notion met with Jefferson's approbation.[4]

Between the two parties, or rather above them, stood the founder of the Federalist party himself. Even Hamilton

Am., VII., pp. 464, 465, 467, 468. Benton, in his Abridgment of the Debates of Congress, omits the passage cited by Hamilton from Bayard's speech.

[1] Jeff., Works, IV., p. 340.

[2] The Anas., Jeff.'s Works, IX., p. 210.

[3] Madison to Jefferson, Jan. 10, 1801: "And if, in reference to the constitution, the proceeding be not strictly regular, the irregularity will be less in form than any other adequate to the emergency, and will be in form only, rather than in substance." J. C. Hamilton, Hist. of the Rep. of the U. S. of Am., VII., pp. 431, 432. Compare Ham., Works, VI., p. 509.

[4] Jeff., Works, IV., p. 355. Edition of 1854.

advised that a concession should be made to the interests of political expediency.[1] The possibilities which the equal electoral vote placed in the hands of the Federalists in the house of representatives were to be used wherever possible, to force certain promises from Jefferson. But Hamilton did not wish to go any farther. He declared the project of the interregnum to be "dangerous and unbecoming," and thought that it could not possibly succeed.[2] Jefferson or Burr was the only question. When his party associates also seemed to have adopted this view, he used his whole influence to dissuade them from smuggling Burr into the White House. He had written to Wolcott on the 16th of December, that he expected that at least New England would not so far lose her senses as to fall into this snare. When he was mistaken in these expectations he wrote letter after letter to the most prominent Federalists who might exert an influence directly or indirectly on the election. "If there be a man in the world," he wrote to Morris, "I ought to hate, it is Jefferson."[3] Spite of this, however, he pleaded for Jefferson's election harder than any

[1] It cannot be denied that this concession was greater than is to be desired for Hamilton's political fame. He writes to Wolcott, Dec. 16: "Yet it may be well enough to throw out a lure for him [Burr] in order to tempt him to start for the plate, and to lay the foundations of dissension between the two chiefs." Ham., Works, VI., p. 486. It is characteristic of the book written by Hamilton's son and often here referred to, that he does not print this passage, although he gives a literal reproduction of a large portion of the letter. Hist. of the Rep. of the U. S. of Am., VII., pp. 434, 435. Besides, this is not by any means the only instance in which Hamilton's political morality suffered in the violence of party strife.

[2] "It has occurred to me that perhaps the Federalists may be disposed to play the game of preventing an election, and leaving the executive power in the hands of a future president of the senate. This, if it could succeed, would be, for obvious reasons, a most dangerous and unbecoming policy. But it is well it should be understood that it cannot succeed." Ham., Works, VI., p. 508.

[3] Ham., Works, VI., p. 499.

Republican: "for in a case like this," he added, "it would be base to listen to personal considerations."[1] Besides, he always dwelt with emphasis on the folly, the baseness, the corruption and impolicy of the Burr intrigue. In all these letters, some of which are very lengthy, he shows himself the far-seeing statesman, and examines everything with calmness and incision; but at times he rises to a solemn pathos. With the greatest firmness, but at the same time with a certain amount of regret, he writes to Bayard: "If the party shall, by supporting Mr. Burr as president, adopt him for their official chief, I shall be obliged to consider myself as an isolated man. It will be impossible for me to reconcile with my motives of honor or policy the continuing to be of a party which, according to my apprehension, will have degraded itself and the country."[2]

Hamilton's intellectual superiority was still recognized by the Federalists, but spite of this he stood almost isolated from every one. The repulsive virulence with which the party war had been waged during all these years, and the consciousness that their defeat was in a great measure due to the bitter and exasperating contentions among themselves, had dulled the political judgment and political morals of most of the other leaders. Hamilton's admonitions were not without effect, but he was not able to bring about a complete surrender of the plan which was as impolitic as it was corrupt. The electoral contest in the house of representatives continued from the 11th to the 17th of February. Not until the thirty-sixth ballot did so many of the Federalists use blank ballots that Jefferson received the votes of ten states and was declared the legally elected president. According to the testimony of the Federalist representatives themselves, the field would not even yet have been cleared were it not that Burr had surrendered

[1] Ibid, VI., p. 501.
[2] Ibid, VI., p. 419. This letter is erroneously dated Jan. 16, 1801.

his ambiguous position. He could not completely and formally renounce his Republican friends, and hence the Federalists received from him only vague and meaningless assurances. Under these circumstances, it would have bordered on insanity to have plied every art to secure Burr's election, for, spite of his brilliant gifts, he was looked upon as a thoroughly contemptible man.[1] All the dangers to the party and the country which would have been the consequences of the success of their intrigues, they would have knowingly entailed in order to place an unworthy character at the head of the government—one who would have turned his back on them the moment they had helped him into power. They would have been throwing dice to determine the future of the Union, simply for the satisfaction of venting their hatred on Jefferson.[2]

Every one was fully conscious of the magnitude of the crisis. Bayard wrote to Hamilton on the 8th of March concerning the last "caucus" of the Federalists: "All acknowledged that nothing but desperate measures remained, which several were disposed to adopt, and but few were willing openly to disapprove. We broke up each time in confusion and discord, and the manner of the last ballot was arranged but a few minutes before the ballot was given."[3] Some years later he repeated the assertion under oath, that there were some who thought it better to abide by their vote, and to remain without a president, rather than choose Jefferson.[4] But reason and patriotism at

[1] Sedgwick to Hamilton: "As to the other candidate [Burr], there is no disagreement as to his character. He is ambitious, selfish, profligate. His ambition is of the worst kind; it is a mere love of power, regardless of fame, but as its instrument; his selfishness excludes all social affections, and his profligacy unrestrained by any moral sentiment, and defying all decency. This is agreed." Ibid, VI., pp. 512, 513.

[2] The political campaign of 1872 offers many analogies to this. See the admirable article in the *Nation* of October 17, 1872, pp. 244, 245.

[3] Ham., Works, VI., p. 523.

[4] Randall, Life of Jeff., II., p. 608

length obtained the mastery. Bayard seems to have been the instrument of this decision.[1]

How much Hamilton contributed to the defeat of the advocates of the *va banque!* it is not easy to estimate. Randolph, at the time a member of the house of representatives, often expressed his conviction that the safety of the republic was due to Hamilton.[2] There was no difference of opinion in the two parties on this, that the victory of the stubborn Federalists would have seriously endangered the republic.

One month before the balloting began we find the conviction prevalent among the Federalists that the Republicans would, under no circumstances, be satisfied with an interregnum, or with the election of Burr. James Gunn, a federal senator from Georgia, wrote to Hamilton on the 9th of January: "On the subject of choosing a president some revolutionary opinions are gaining ground, and the Jacobins are determined to resist the election of Burr at every hazard. . . . I am persuaded that the Democrats have taken their ground with the fixed resolution to destroy the government rather than yield their point."[3]

The Republicans did not oppose this conviction, but declared it to be well-founded with all the emphasis with which such declarations have always been made in America. Jefferson wrote to Monroe on the 15th of February, two days before the election: "If they [the Federalists] had been permitted to pass a law for putting the government into the hands of an officer, they would certainly have prevented an election. But we thought it best to declare openly and firmly, one and all, that the day such an act

[1] John Adams to Jefferson, June 14, 1813: "You and Mr. Madison are indebted to Bayard for an evasion of the contest." Adams, Works, X., p. 43.

[2] Garland, Life of Randolph, I., p. 187.

[3] Ham., Works, VI., p. 509.

was passed the middle states would arm, and that no such usurpation, even for a single day, should be submitted to. This first shook them, and they were completely alarmed at the resource for which we declared, to wit, a convention to re-organize the government and to amend it."[1] Armed resistance, followed by a peaceful revolution;[2] such was the last word of the Republicans. The Federalists rightly considered this ultimatum to be no vain threat. In a letter written the day after the election to Madison, Jefferson speaks of the "certainty" that legislative usurpation would have met with armed resistance. And Jefferson's testimony is by no means the only evidence.[3] Even the press began to treat the subject of "*bella, horrida bella!*"[4] More than this: In Virginia, where the excitement was greatest, establishments had already been erected to supply the necessary arms, and even troops. John Randolph, in the speech already mentioned, had completely lifted the curtain that hung over this subject. Reliance was to be placed on Dark's brigade, which had promised to take possession of the arms in the United States armory at Harper's Ferry.[5]

[1] Jeff., Works, IV., p. 354.

[2] The word revolution seems to be justified, because it is not to be assumed that Jefferson here meant to speak of the calling of a convention in the manner prescribed by the constitution.

[3] See the letter of St. George Tucker to Monroe (Jan. 7, 1801), in J. C. Hamilton, Hist. of the Rep. of the U. S. of America, VII., p. 432, and that of Th. Mann Randolph, Jefferson's son-in-law, to Monroe, Feb. 14, 1801.

[4] See an interesting extract from Porcupine's [Cobbet's] *Gazette*, in Randall, Life of Jeff., II., p. 603.

[5] "We did not then rely upon the Richmond armory, not yet in operation, but on the United States armory at Harper's Ferry. At that time, when the constitution itself was put at hazard, rather than relinquish the long-enjoyed sweets of power, when the sun rose upon the house balloting—balloting through the night, and through successive days for a chief magistrate—had we not the promise of Dark's brigade, and of the arms at Harper's Ferry, which he engaged to secure in case of an attempt to set up a pageant under color of law to supersede the pub-

The idea of waging war on the Union with its own weapons is very old; the secessionists did nothing more than carry out the plan which the "fathers" of the republic had considered as embodying the proper course under certain contingencies.

The victory of the Republicans did not by any means produce the revolution in internal politics which was to be expected. When the electoral vote had been made known, Jefferson, in the first transports of his joy over the victory, blew with all his might the trumpet of the opposition. He tendered Chancellor Livingston a place in his cabinet, that he might be of some service in the "new establishment of republicanism; I say for its new establishment, for hitherto we have only seen its travestie."[1] The stubborn resistance of the Federalists, which wounded his vanity not a little, increased his angry feeling against them. On the 18th of February he furnished Madison with an account of the election. He lays particular stress on the fact that the Federalists did not finally vote for him, but that there was an election only because a part of them abstained from voting, or only used blank ballots. "We consider this, therefore," he says, "a declaration of war on the part of this band."[2]

These utterances are thoroughly in keeping with Jefferson's preceding course, and with his words and actions towards the Federalists and their policy. Spite of this, however, his own future policy is not to be inferred from them. Hamilton did not fall into this error, because he was well acquainted with the main traits of Jefferson's char-

lic will, after defeating the election by the pertinacious abuse, under the pretense of the exercise, of constitutional right to support one of the persons returned by artifice, whom they professed to abhor? General Hamilton had frowned indignantly upon this unworthy procedure, for which he had paid the forfeit of his life."

[1] Jeff., Works, IV., p. 339.

[2] Ibid, IV., p. 355.

acter, and estimated their relative value correctly, although his judgment on the whole may have been somewhat too severe. He therefore saw and foretold the character of Jefferson's policy better than Jefferson himself could have done while under the influence of the excitement of the political campaign. Hamilton writes to Bayard, Jan. 16, 1801: "Nor is it true that Jefferson is zealot enough to do anything in pursuance of his principles which will contravene his popularity or his interest. He is as likely as any man I know to temporize, to calculate what will be likely to promote his own reputation and advantage; and the probable result of such a temper is the preservation of systems, though originally opposed, which being once established could not be overturned without danger to the person who did it. To my mind, a true estimate of Mr. Jefferson's character warrants the expectation of a temporizing rather than of a violent system."[1]

This judgment of Hamilton found its confirmation in the inaugural address of the new president. In it Jefferson counsels that the rights of the minority should be held sacred, that a union in heart and soul should be brought about, and that an effort should be made to do away with despotic political intolerance as religious intolerance had already been done away with. "We have called by different names brothers of the same principle. We are all Republicans—we are all Federalists."[2]

Jefferson could not only use such language without danger, but it was unquestionably the best key in which he could have spoken, although the extreme Republicans would have much preferred to listen to a *vae victis!* He had asserted as early as the spring of 1796, that "the whole landed interest,"[3] and therefore a large majority of the peo-

[1] Ham., Works, VI., p. 420.

[2] State Papers, IV., p. 10; Statesman's Manual, I., p. 150.

[3] Van Buren, Political Parties, rightly remarks that this expression embraces the owners of the land as well as its cultivators.

ple, belonged to the Republican party.[1] There is now little difference of opinion on the point that Jefferson would immediately have followed Washington in the presidential chair, if the electors had been nothing but the men of straw into which they afterwards degenerated. But even if this could be rightly questioned, it would not yet follow that the majority of the people were then really inclined to the Federal party. The Republicans were far inferior to the Federalists in the numbers and the ability of their leaders; and, moreover, the great moneyed interests of the northern states were the corner-stone of the Federal party. These were two elements which might very well keep them in power a while longer, even if the majority of the people were in reality more attached to the principles of their antagonists. But they were not a support on which they could establish lasting rule. In a democratic republic, the political influence of the moneyed interests, when they have not attained the immense proportions they have in the America of to-day, is, as a rule, very limited, and that of talent is very frequently still smaller. Hamilton's lead was followed as long as the pressure of necessity was felt. But as soon as the most difficult labor of organization was done, his superiority became one of the greatest obstacles which stood in the way of his public activity. Not only did the Federalists put him aside by degrees, but their fault-finding with his actions and omissions began here and there to partake of the tone of the most odious attacks made by the Republicans on his policy.[2] This was a sign of the time which deserved the most earnest consideration. When in a political party in a popular state a breach occurs between its founders and the masses that compose it, its days are as a rule numbered. If the breach takes place

[1] Jeff., Works, IV., p. 139.

[2] "Hamilton is obnoxious and persecuted by popular clamors, in which Federalists to their shame join." Fisher Ames, Works, I., p. 289.

after the essential idea on which the party was founded has been realized, it will not and cannot be long survived.

This one essential idea, which constituted the real spark of vitality in the Federalist party, had been realized before the end of Washington's second term as president, and the existence of the work as well secured as was possible under the circumstances. The force which moved the pendulum in its forward motion was exhausted. And if it did not begin its backward course immediately, but seemed to stand for a moment in suspense, it was because an accidental force acted upon it from without. The prolongation of the supremacy of the Federal party was due mainly to the unhealthy attitude assumed by the anti-Federalists towards France. When the fruits of this began to be reaped in the transactions under the government of the Directory, the power of the Federalists, which was then declining, at once mounted to its zenith.[1] The congressional elections of 1799 were very favorable to them.[2] The value of this success, however, must not be over-estimated, as it was owing to a question of external politics. Only in case foreign politics, by the outbreak of war, should be kept most prominently in the foreground, could they hope that their success would obtain a more lasting character. But the quarrel between France and the United States had reached its height with the X. Y. Z. affair and with Gerry's return. When Adams, contrary to a former solemn assurance, resolved to send a new embassy to France, the Republicans soon regained the ground they had lost; for the attitude of the people towards questions of home politics remained essentially unaltered.

[1] "Then they were very strong." F. Ames, l. c.

[2] The change in the southern states especially was very great. In Georgia two Federalists were elected. Of the six representatives from South Carolina, five were Federalists, of the ten from North Carolina seven, and of Virginia's nineteen, eight. In the New England states only one anti-Federalist was elected. Only in the middle states could the Federalists boast of no great success.

The position of the Federalists in the presidential election of 1801 had been a desperate one. The hopelessness of their situation drove them to the rash and despicable game in the house of representatives. They would have been deterred from it if they could have ascribed their defeat to accidental and transitory causes. The correspondence of their leaders, however, shows plainly that their faint hope of better success after four years was only a hope against their better judgment. The reaction had fairly set in. The Republicans did not dare to touch the essential things which had been accomplished during the twelve years' victory of the Federalists over them, and did not even desire to do so; for the same matter is seen very differently from the point of view of the administration and of the opposition. It might not be expected of them that they would intentionally increase the heritage left them, but if they would not immediately squander it, the capital would bear interest and increase. More was not to be expected. The defeat of the Federalists was a decisive one, for even the citadel of their strength was undermined. While in the southern states a more temperate feeling prevailed, the Republicans in the New England states began to celebrate triumphs.[1] The decisive point, however, was that they obtained a firm footing in the rural districts, whereas, hitherto they had found adherents only among the more mercurial population of the large towns.[2] The choice troops of the Federalists began to waver on every side, and the intrigues of the leaders in the house of representatives

[1] "While the eastern states have grown worse, I verily believe the southern have grown better." F. Ames, Works, I., p. 288.

[2] "Jacobinism is certainly spreading from towns and cities into the country places. It is less watched and less warmly resisted in the latter than in the former. It is therefore getting to be much at home in the country, and will remain till the convulsion of some great internal events shall change the whole political and moral order of our nation." F. Ames to Wolcott, Jan. 12, 1800. Gibbs, Mem. of Wolcott, II., p. 321.

gave the impulse to the complete dissolution of their ranks. Yet neither the sense of honor, nor the healthy judgment which drew from Hamilton the declaration that he must renounce a party which had thus soiled its name, was wanting among the masses. It was seen at the moment how great was the mistake made. Even during the balloting in the house of representatives, the Federalists went over in swarms to the enemy; every vote for Burr was another nail in the coffin of the party.[1] This sudden and violent fall of the Federal party explains the security which the continuance of the Union enjoyed during the two following decades. The party which represented particularistic tendencies was in possession of power, and had an overwhelming majority. In the next presidential election Jefferson and Clinton received each one hundred and sixty-two electoral votes, while Charles C. Pinckney and Rufus King received only fourteen each,[2] and in 1805 there were only seven Federalists in the senate. But even if the probability of a disruption was therefore very small, the character of the internal struggle remained the same. This character was even placed in a clearer light by the fact that the parts played by each were changed, so far as the question of right was concerned, and that the opposition, spite of its weakness, was not satisfied with wishes and threats of separation, but began in earnest to devise plans of dissolution.

According as it became evident in what manner Jefferson thought of carrying out in detail the abstract propositions of his inaugural address, the broken ranks of the Federalists began to rally again. A large number had

[1] Jefferson writes to Madison the day after the election: "But their conduct seems to have brought over to us the whole body of Federalists, who, being alarmed with the danger of a dissolution of the government, had been made most anxiously to wish the very administration they had opposed, and to view it, when obtained, as a child of their own." Jeff., Works, IV., pp. 355, 356.

[2] The Republicans had obtained victories even in New Hampshire and Massachusetts.

gone over permanently to the Republican party, but the leaders resumed the struggle with redoubled energy and acrimony. A division in the Republican camp, which had been gradually broadened by Burr's ambitious plans, gave them new hope that they would sooner or later obtain control of the helm once more.

Even Hamilton again drew near to his former associates. He could not renounce politics and naturally sided with the opposition, although he defended Jefferson against the exaggerated charges of the rest of the Federalists, and foretold that his administration would be comparatively conservative. Neither a reconciliation, nor even a momentary suspension of the animosity between the ancient rivals, was possible. Hamilton subjected the very first message of the president to an exhaustive criticism which had a strong admixture of trenchant irony.[1] Still more energetically did he oppose the attacks on the then system of taxation and on the federal courts. On these questions his attitude was the same as that of the rest of the Federalists, and they were therefore gratified to see him at his former post as their representative. But in the most important questions which called for a solution during Jefferson's first presidential term, he deviated as far from them as in the election of 1801.

The Mississippi question, which had played so important a part in the times of the confederation, had arisen again and demanded a solution, as Spain had on the 1st of October, 1800, ceded the whole of Louisiana to France. The United States had had experience enough already of how dangerous and how great an obstacle in the way of the commercial development of the country it might become, if the mouth of the Mississippi were in the possession of a foreign power, even if it were no stronger than Spain. Jefferson had not shared in this experience in vain.

[1] The articles were signed Lucius Crassus.

This was one of the instances in which he gave evidence of a really statesmanlike insight. He wrote on the 18th of April, 1802, to his embassador Livingston in Paris: This cession "completely reverses all the political relations of the United States, and will form a new epoch in our political course. . . . There is on the globe one single spot, the possessor of which is our natural and habitual enemy."[1] Livingston was instructed to enter into negotiations immediately for the cession of New Orleans and the Floridas, in case France should consider the possession of Louisiana indispensably necessary. As Bonaparte at this very time entertained the idea of resuming the old French colonial policy, the negotiations remained long without result. The uprising of the negroes in San Domingo and the warlike turn which the affairs of Europe began again to assume, disposed him more favorably towards the American offer. On the 30th of April, 1803, the treaty, ceding the whole of Louisiana to the United States for $15,000,000, was concluded in Paris.[2] Hamilton shared Jefferson's view, that the purchase of Louisiana was a question of the greatest, and even of vital, importance for the Union.[3] His opposition on other occasions to the policy of the administration, and his personal enmity to the president, did not

[1] Jeff., Works, IV., pp. 431, 432.

[2] Stat. at Large, VIII., p. 200.

[3] He writes, Dec. 29, 1802, to Charles C. Pinckney: "You know my general theory as to our western affairs. I have always held that the unity of the empire and the best interests of our nation require that we should annex to the United States all the territory east of the Mississippi, New Orleans included." Ham., Works, VI., pp. 541, 552. Randall, Life of Jeff., VII., p. 87, says that nothing is known of Hamilton's attitude on this question. Wherever there is a point in Hamilton's policy to which he cannot refuse his recognition he shows himself so ignorant of it that design is the only explanation of the fact. Hamilton wrote also in an artle in the *Evening Post*, signed Pericles: "Two courses only present [themselves]: First, to negotiate and endeavor to purchase, and if this fails, to go to war. Secondly, to seize at once on the Floridas and New Orleans and then negotiate."

prevent his lending him a helping hand in this matter when an opportunity offered.[1]

The great majority of the Federalists opposed this increase of the territory of the Union with as much decision as Hamilton advocated it. They showed in their attitude towards this question a shortsightedness which would have been astonishing even among the doctrinarians of the opposite party. The great extent of the southern states, and their dominant position in politics, afforded ground for the belief that their internal development would be more rapid than that of the northern states, and that they would be the governing power of the Union in all future times.[2] The purchase of such enormous tracts of land was therefore a matter of the deepest concern to New England, as it seemed to give the southern states a preponderance for all time. Little was thought on this occasion of the extension of the slave territory, the only evil, in fact, connected with the purchase of Louisiana. This point was not entirely unnoticed, even now; but it did not become very prominent

[1] See J. C. Hamilton, Hist. of the Rep. of the U. S. of Am., VII., p. 604.

[2] "The balance of power under the present government is decidedly in favor of the southern states, nor can that balance be changed or destroyed. The extent and increasing population of those states must forever secure to them the preponderance which they now possess. Whatever changes, therefore, take place, they cannot permanently restore to the northern states their influence in the government, and a temporary relief can be of no importance." The very interesting letter from which this passage is taken is printed in full in J. C. Hamilton, Hist., VII., p. 781–786. Its author, according to the last-named writer, was a leading member of congress, and it was directed to a member of Washington's cabinet, probably Pickering. Alexander Hamilton here again gives a proof of his intellectual keenness and penetration. Major Hoops relates that Hamilton said to him in a conversation in February, 1804: "The bare attempt to carry such a disunion into effect would necessarily throw the people of the United States into two great parties, geographically defined; that the northern division must prevail in the struggle that must ensue," etc. J. C. Hamilton, Hist. of the Rep. of the U. S. of Am., VII., p. 779.

until several years later, when the disastrous influence of slavery on the whole life of the people began to be better understood. In the later struggles of party on the slavery question this was overlooked, or intentionally covered up. The first phase of the conflict over the Louisiana question has been thus placed in an altogether false light. The Federalists have been represented as the vanguard of freedom; whereas, in fact, they represented only a short-sighted, ungenerous, particularistic policy.

The territory covered by the name Louisiana embraced several of the present central and northwestern states.[1] And this of itself shows that the charge so often made, in later times, against Jefferson and his party, that they made this purchase mainly or only in the interest of slavery, is wholly unfounded. The truth is, that the New England states opposed the acquisition of this western territory more than that which lay in the south. Gouverneur Morris, indeed, declared it the "peculiar heritage" of the eastern states.[2] But most of the Federalists still assumed the same standpoint which the New England states had taken under the confederation on the Mississippi question. They anticipated that the incorporation of the western territory into the Union, and its economical development,

[1] It stretched from the mouth of the Mississippi over Iowa, Minnesota, Dakota, and Kansas, and reached westward to the Rocky Mountains.

[2] "To the eastern states, when separately considered, this [the remaining of Louisiana in possession of a foreign power] may appear a matter of less moment than to the other great divisions of our country. But they will perceive in it the loss of their navigation; they will see the theater of their industrious exertions contracted; they will feel the loss of the productions of that western world in the mass of their commercial operations; and, above all, they will feel the loss of an ample resource for their children. . . . The exuberant population of the eastern states flows in a steady stream to the western world, and if that be rendered useless, or pass under the dominion of a foreign power, the fairest hope of posterity is destroyed." Speech in the senate, Feb. 24, 1803. Sparks Life of G. Morris, III., pp. 418, 419.

would prove injurious to their commerce, and they feared a disturbance of the political equilibrium from this quarter as much as from the south.[1] The two elements together had weight enough with them to draw from them the declaration that they would be thus forced to a separation from the Union.[2]

In the debate on this side of the question, the Federalists

[1] Eleven years later the judgment of the New England Federalists was no better. In the resolutions of the Hartford convention, of which more will be said below, it was declared necessary that there should be an amendment to the constitution, limiting still farther the right of congress to admit new states into the Union. The grounds of the demand are as follows: "At the adoption of the constitution a certain balance of power among the original parties was considered to exist, and there was at that time, and yet is, among those parties a strong affinity between their great and general interests. By the admission of these states that balance has been materially affected, and unless the practice is modified, must ultimately be destroyed. The southern states will first avail themselves of their new confederates to govern the east, and finally, the western states, multiplied in number, and augmented in population, will control the interests of the whole. Thus, for the sake of present power, the southern states will be common sufferers with the east in the loss of permanent advantages. None of the old states can find an interest in creating prematurely an overwhelming western influence, which may hereafter discern (as it has heretofore) benefits to be derived to them by wars and commercial restrictions." Dwight, History of the Hartford Convention, p. 371. At the same time, a New England paper wrote: "The western states beyond the mountains are not taken into view in this connection for any other purpose than to show that they do not, ought not, and never can belong to the Union. Let the western states go off and take care of themselves." Ingersoll, Second War between the U. S. of America and Great Britain, II., p. 225.

[2] Plumer, of New Hampshire, declared in the senate: "Admit this western world into the Union, and you destroy at once the weight and importance of the eastern states, and compel them to establish a separate, independent empire." And thus Griswold, of Connecticut, who was looked upon as the leader of the Federalists, said in the house, Oct. 25, 1803: "The vast, unmanageable extent, which the accession of Louisiana will give to the United States, the consequent dispersion of our population, and the distribution of the balance which it is so important to maintain between the eastern and western states, threatens, at no very distant day, the subversion of our Union."

saw themselves, in consequence of the nature of the thing, limited to a weak defense. They helped themselves now, as the south had helped itself from the beginning in the slavery question. As they could not refute the arguments of their adversaries, but could only oppose assertions to them, they played their best card—made threats supply the place of reason. There was another side, however, in which their position was so strong that their opponents even considered it in parts unassailable. The purchase of Louisiana was a question which should have been judged and decided only on statesmanlike principles. And in truth, the position of both parties was determined by these principles, but the constitution was destined again to serve as sword and shield to the minority.

The Federalists claimed that the constitution did not authorize congress to undertake such a transaction; and that it should not be completed before the authority thereto had been obtained by an amendment. To which Nicholson of Maryland replied, that if he had been asked anywhere else whether a sovereign nation had the right to acquire new territory, he would have considered the question an absurd one; that the right in question appeared so obvious and undeniable that it scarcely needed to be proved. It could not certainly be questioned that the idea of sovereignty embraces this right. But it might well be, that the right belonged to the "sovereign nation" and not to congress. Congress, according to the theory of the Republicans, possessed only such power as was expressly given it by the constitution, and the right in question was not given by it. The only provision which could be produced in support of the right is Article IV., Sec. 3, § 2: "The congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States." But here evidently the only territory meant is such as the United States possessed at the time, or which was claimed by them as

their property.[1] The Republicans could not question this.[2] Their demonstration of its constitutionality was therefore only a deduction from the general principles of political science—a mode of interpreting the constitution which they had always declared to be absolutely untenable.

The Federalists did not all view the constitutional question from the same standpoint. The most important of all the objections urged was based on the fundamental question of the nature of the Union. Th. Pickering of Massachusetts declared in the senate that it was not in the power of the president, or of congress, to incorporate the territory into the Union, as the treaty demanded: "He believed that our administration admitted that this incorporation should not be effected without an amendment of the constitution; and he conceived that this necessary amendment could not be made in the ordinary mode by the concurrence of two-thirds of both houses of congress and the ratification by the legislatures of three-fourths of the several states. He believed the assent of each individual state to be necessary for the admission of a foreign country as an associate in the Union; in like manner as in a commercial house the consent of each member would be necessary to admit a new partner into the company."[3] If the constitution were a contract between sovereign states, this argument could not be assailed. But how did the Federalists come to ascribe this character to it now, after they had for twelve years governed the country on the assumption that the constitution had transformed the confederation into a nation? The Republicans repeated the Federal creed with

[1] Scott vs. Sanford, Howard's Reports, XIX., p. 615. The supreme court did not base the constitutionality of the acquisition of foreign territory on these provisions of the constitution, but on the authority of the president and the senate to make treaties. American Insurance Company vs. Canter, Peter's Reports, I., p. 542.

[2] Jeff., Works, IV., pp. 505, 506.

[3] Deb. of Cong., III., p. 13.

the utmost fervor; and the Federalists with equal energy preached the Republican gospel.

Under these circumstances a great deal might be said about the constitutional question, and yet nothing accomplished. John Quincy Adams saw this. He thought that constitutional considerations should not stand in the way, even if well grounded; for he was certain that all the legislatures would adopt an amendment "amply sufficient for the accomplishment of every thing for which they had contracted."[1] This was not only a new way of securing indemnity, but it was seeking indemnification in a case in which there was no right to give it. If Pickering's view was right, even the ratification of all the legislatures could not make such an amendment valid. The constitution would, on this supposition, be a contract between the states and not between the legislatures of the states, and an alteration not provided for by the contract could be considered only by the states, the legal organ of which was not in this case the legislatures, since the constitution did not give them this right, and the state constitutions contained provisions by which it was directly or indirectly withheld from them.[2]

The solution, therefore, proposed by Adams was, viewed from Pickering's point of view, also a violation of the constitution, and consequently nothing could be gained by it. If Pickering's demand, with all the logical consequences to be deduced from it, were conceded, it would be neces-

[1] Deb. of Cong., III., p. 19.

[2] The matter must be presented in this way, because it is a universally recognized principle of American constitutional law that congress has no power except such as is expressly granted it, and that on the other hand the powers of the state legislatures are limited only by the reservations of the constitution of the Union and of the state constitutions. Cooley, Constitutional Limitations, pp. 87, 88, 168, 173, in which work the judicial decisions on this point are collected; Jameson, The Constitutional Convention, pp. 86, 87; Tiffany, Government and Constitutional Law, pp. 81, 175

sary that the amendment in question should be ratified by all the states; that is, by state conventions or by the legislatures after they had been authorized thereto in one of the various constitutional ways prescribed. An inevitable consequence of this was, that it would be optional with any state, which refused to join the ratification, to secede from the Union; or that its refusal should, *eo ipso*, operate as a nullification of the contract of purchase. Obviously the federal government could under no circumstances accept this alternative. There remained to it therefore—speaking from the point of view of the opposing Federalists—only a choice between a violation of the constitution and a surrender of the purchase which it rightly considered was of the highest interest, and even necessary, to the nation. It decided on a conclusion of the purchase, and accomplished it in fact in such a way, that the government itself was obliged to concede that it had been guilty of a breach of the constitution.

Jefferson himself unconditionally granted that the constitution did not warrant the acquisition of foreign territory, still less its incorporation into the Union.[1] And even the objections of some of his friends could not change his view of the constitutional question. Spite of this, however, he declared himself ready to attach no further weight to it if his friends thought differently from

[1] He writes to senator Breckenridge, of Kentucky, Aug. 12, 1803: "But I suppose they [both houses of congress] must then appeal to the nation for an additional article to the constitution, approving and confirming an act which the nation had not previously authorized. The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The executive, in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the constitution. The legislature, in casting behind them metaphysical subtleties, and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them unauthorized what we know they would have done for themselves had they been in a situation to do it." Jeff., Works, IV., p. 500.

himself. The inference of authority by "construction," which was the sole legal basis of his intemperate attacks on Hamilton's policy, was now to be put a stop to "when" it should produce any evil effect.[1] There was no more said about the amendment.

This manner of playing with his own convictions concerning the legality of a political step was not the only characteristic of the man. Long before the evil consequences which the purchase of Louisiana had in extending the slave territory were fully developed, this bold contempt for the constitution proved exceedingly disastrous. An invaluable precedent was afforded to the "country, and especially to the south," inasmuch as it "made a violation of the constitution dependent on the will of the majority, subordinated principle to interest, and as a consequence left no obstacle in the way of the interests and wishes of the south."[2]

There was one danger to which the violators of the constitution did not expose themselves, because, as they claimed, the majority of the people favored the purchase of Louisiana. Right, therefore, as the Federalists might be, according to the letter of the constitution, every effort to stir up the people against the reigning majority would remain fruitless. Nor did they ignore this. Fisher Ames wrote, Feb. 24, 1803: "They are lazy, or in despair, and they urge, with wonderful eagerness, the futility of all exertions to retrieve the public mind from its errors, or to prevent their consequences."[3] This applied not only to the Louisiana question, but to the entire policy of the

[1] "I confess, then, I think it important in the present case to set an example against broad construction by appealing for new power to the people. If, however, our friends shall think differently, certainly I shall acquiesce with satisfaction, confiding that the good sense of our country will correct the evil of construction when it shall produce ill effects." To W. C. Nicholas, Sept. 7, 1803. Ibid, IV., p. 507.

[2] Kapp, Geschichte der Sklaverei, pp. 98, 99.

[3] F. Ames, Works, I., p. 318.

country, home as well as foreign. "The Federalists know that *eo nomine* they are gone forever."[1] There were now only three Federalist state legislatures. "Connecticut," says Fisher Ames, "stands, but its good men should say incessantly 'take heed lest we fall.' Massachusetts, on the other hand," he complained, had only a "show of federalism. It may last a year longer."[2] Spite of this, however, the radical wing of the Federalists did not give up all hope. The undeniable ruin of the party caused them to change their base of operations, but in all other respects it only urged them on to the adoption of measures which grew more extreme every day.

An effort has often since been made to represent it as one of many malicious and entirely ungrounded calumnies, that there was at this time any serious thought of a disruption of the Union. This is only one instance of the "white-washing" tendencies and decorative coloring characteristic of the greater number of American historical works.[3] In the letters of the Federalists we find not only that wishes to this end were expressed, but that formal plans were devised. True, these had no prospect of success. Even among the leaders the greatest want of unanimity prevailed. Some of them, especially Hamilton, were very decidedly opposed to the project, and the majority either held that its time was not yet come, or they were wanting in courage, or in the energy to act.[4] In consequence of

[1] Jeff., Works, IV., p. 542.

[2] Fisher Ames, Works, I., pp. 320, 321.

[3] In the same proportion as their friends are painted in too glowing colors, their enemies are drawn in colors altogether too dark.

[4] We read in the letter of a "leading member of congress" to a member of Washington's cabinet from Massachusetts, already referred to: "We have endeavored during this session to rouse our friends in New England to make some bold exertions in that quarter. They generally tell us that they are sensible of the danger, that the northern states must unite, but they think the time has not yet arrived. . . . . It appears impossible to induce our friends to make any decisive exertions."

this all open agitation among the people was nipped in the bud, and had it been attempted on a larger scale, it would doubtless have found a pitiable and speedy end. But the intrigue which was to introduce the realization of the scheme was so nicely planned that in case it succeeded there would have been room for very serious fears.

Hamilton was not wont to see phantoms in broad daylight, nor will he be accused of uttering malicious calumnies against the Federalists; and yet he declared the plan of secession to be a fact, and considered it necessary to give a thorough exposition of his fears. He read on the 10th of February, 1804, before an informal meeting of distinguished Federalists, gathered to discuss the pending gubernatorial election in New York, a paper on the reasons which made it desirable that Mr. Lansing should be successful rather than Colonel Burr. In the sixth paragraph of this paper he says: "These causes are leading to an opinion, that a dismemberment of the Union is expedient. It would probably suit Mr. Burr's views to promote this result, to be the chief of the northern portion; and, placed at the head of the state of New York, no man would be more likely to succeed."[1] This was, in a few words, the aim and end of the intrigues of the Burrites and radical Federalists combined. Burr was to be made governor of New York, and to use the position as a stepping-stone to the White House. Burr's organ communicated this much very frankly to the public.[2] Whether this plan was devised by Burr or by his

[1] J. C. Hamilton, Hist. of the Repub. of the U. S. of Amer., VII., p. 771.

[2] Burr was nominated governor in the city of New York, Feb. 20, 1804. Two days later the *Morning Chronicle* wrote: "They offer Burr as a man who must be supported, or the weight of the northern states in the scale of the Union is irrevocably lost. If the southern, and particularly the Virginia, interests are allowed to destroy this man, we may give up all hope of ever furnishing a president to the United States. The influence of the northern states in the affairs of the Union and their future prosperity imperiously demand, therefore, that we sustain Aaron

Federal supporters, and whether Burr was advised by these of their ultimate designs, it is not possible to discover.

The fact that these Federalists thought of using Burr, is alone a judgment on themselves and their cause, and shows satisfactorily how poor were their prospects of success. The contempt with which Burr's moral character inspired them remained as strong as ever, and they gave unconcealed expression to it in their letters. Besides, they feared that he might deceive them, because the field offered to him by their plans might not seem broad enough for his ambition. Yet, notwithstanding this, they inquired what else they could do. To remain inactive, they said, was certain ruin to them; their friends alone would make no endeavors. As supporters of Mr. Burr, they would receive some assistance, although even that was of a doubtful nature, and they had reason enough to be jealous of it. This was good reasoning. If they could realize their plans at all, it could be done only with the aid of the Burrites. And if Burr were made governor of New York, by the aid of the Federalists, such a union was perhaps possible, for, as Hamilton remarked, the leaders of the Republicans in New England were Burrites, and Burr enjoyed no small popularity among the masses of the New England Federalists. If the union could be effected, what was essential was attained. The Federalists did not at all desire to see Burr elevated to the presidency. The real importance of the whole project was in the thought of a fusion, and the practical consequences which its Federal advocates hoped to draw from it were in keeping with the reasons which had led to the adoption and prosecution of that idea.

When in 1796 it seemed possible that Jefferson would be the next president, there appeared some articles in the

Burr from sinking in the fury of this contest. We can only do this by making him our governor." Cited by J. C. Hamilton, VII., p. 777.

Connecticut *Courant* which endeavored to incline the northern states, in such a case, to a division of the Union. We quote: "The northern states can subsist as a nation, as a republic, without any connection with the southern. . . I shall in future papers consider some of the grave events which will lead to a separation of the United States. . . endeavor to prove the impossibility of our union for any long period in the future, both from the moral and political habits of the citizens of the United States, and finally examine carefully to see whether we have not already approached the era when they must be divided."[1] This idea, which then could find no support, was now again taken up by the Federalists. The parties had from the beginning corresponded, to a great extent, with the geographical sections; but henceforth the name of Federalist was to be dropped and the war-cry to be expressly and exclusively "the North!" and "the South!" There were interests enough to recommend such a project. If there was no danger of its realization at the present time, the conditions might sooner or later be different. And if it should ever happen that specifically sectional parties should take the place of national parties in the country, the continued existence of the Union would depend entirely on the nature of the fundamental question on which they should divide. But, even assuming that no question should ever arise to make the sectional division the only natural, that is, the only possible one, and therefore the existence of the Union after the old fashion impossible, it was still imperative that the mere plan should be promptly and energetically checked in the beginning. If this were not done, it might frequently lead to the greatest embarrassment, even if never carried into execution.

The project of fusion was not confined to the ultra Federal agitators. The articles of "New Englander" in the

[1] Randall, Jefferson, III., pp. 634, 635.

Connecticut *Courant* demanded only an intimate coalition of the northern states to get rid of the "tyranny of the south," and to establish a just "balance of power."[1] The ultras did not consider this possible. They based their judgment on the diversity of material interests, and the alleged assiduity with which the south and the middle states so nurtured this that a reconciliation could never take place.[2] Hence the northern party was to be constituted of men ready to go to the utmost extreme — that is, even to division of the Union.[3] The three Federal New England states, and first of all Massachusetts, were to take the initiative in the building up of the northern party. If they could succeed in securing Burr's election in New York, it might be possible to carry out the whole plan.[4]

The plan of the ultras was only an extension of the

[1] "Are we to submit to the guidance and the tyranny of the south? . . . The purchase of Louisiana at the expense of fifteen millions of dollars for the augmentation of the southern interest must finally convince the states north of the Chesapeake, that they must unite in the common northern interest. Let, therefore, the disinterested among our Federal and Democratic Republicans lay aside their fatal dissensions, which serve to no purpose, but to the purpose of their enemies. We shall then be able to fix a just balance of power in the United States."

[2] We quote from the letter already cited to a member of Washington's cabinet: "Their [the southern states'] enmity of commerce, on which our prosperity depends, is riveted and unyielding. Besides, there is an inveterate enmity and jealousy of the northern states, which pervades every part of the southern and middle states. This spirit is evidently increasing. Since they have obtained the power, they have become arrogant, and appear determined to carry this spirit into all classes of society, with a view of riveting the prejudices so strongly as to prevent a union of views between north and south under all future circumstances."

[3] "In forming the northern party, it is important to consider what the ultimate views of that party ought to be, and to avoid as much as possible, embarrassing the party with men who will oppose the accomplishment of those ultimate objects. I have no hesitation myself in saying, that there can be no safety to the northern states without a separation from the confederacy." l. c.

[4] l. c.

logical consequences of "New Englander's;" for, as Jefferson said: "The idea of forming seven eastern states is, moreover, clearly to form the basis of a separation of the Union."[1] He was right also in the expectation that the project would fail. Jefferson owed it again to his bitterest enemy that its development did not extend so far as to cause any embarrassment.[2] Hamilton frustrated Burr's election as governor of New York, which was looked upon by both Burrites and Federalists as a condition precedent of the fusion. It was, indeed, more than questionable whether it could have been honorably accomplished, even if Burr had been elected; because there were no great differences between the Burrite and Jeffersonian wings of the Republicans. The northern Republicans were jealous of the southern, and their leaders were bent on obtaining the seats at the head of the table. Since they, as representatives of the minority, had no prospect of being invited there by the majority of their own party, they were prepared to lean on the opposite party which offered them support. If the leaders of both sides had been won over to the plan by its originators, they would perhaps have had enough influence on the masses to make the position of those Republicans led by Virginia a rather hard one in a presidential election. But the ultimate ob-

[1] Jeff., Works, IV., p. 542.

[2] The assertion made later by Plumer, of New Hampshire, to which Ingersoll (Hist. Sketch of the Second War between the U. S. of America and Great Britain, II., p. 221, etc.) attaches so much weight, that Hamilton desired to attend the proposed meeting of the conspirators at Boston, is evidently entirely valueless. Even if no historical credit is to be given to the message said to have been sent to Boston, and mentioned by Hamilton's son (J. C. Hamilton, VII., p. 382) the memorial read in Albany is sufficient proof that Hamilton was opposed to the project. If, therefore, he wished to go to Boston, it could only be with the intention of hindering the further prosecution of the plan. It is scarcely necessary to add that the insinuation to the contrary is not warranted, because Plumer expected forgiveness for his participation in the intrigue, by accusing his accomplices.

ject of the Federalists could never be attained in this way. The motives of the Burrites were just sufficient to operate a momentary fusion, but not to found a political party that could live, and certainly not a party with such extreme tendencies as the Federalists wished. The whole matter involved not a political principle, but only a corrupt political intrigue. Its significance lies entirely in this, that it serves as a measure by which to estimate how far, up to that time, the national feeling had been developed, and in this also, that it assumed as its basis an idea which, in the course of years, grew, through another question, to be one of terrible vitality.

The only immediate consequence of the intrigue was a still greater diminution of the political credit of the Burrites and Federalists. In New York the feuds between the Republicans still continued, and in Pennsylvania violent dissensions broke out among them. But, looked at from a national point of view, the malcontents were still only a faction, which might indeed be injurious, but not dangerous, while the Federalists, by their abandonment of sound political morals, had clipped their own wings. The preponderance of the administration party was so great that it seemed to depend entirely on their tact and moderation whether the country should at last be secured some years of internal quiet. Its foreign politics alone threatened fresh embarrassment. The character which the struggle between England and France began to assume placed the United States in a situation from which they could not easily escape uninjured. But it would have been readily possible, by a firm, rational, and practical policy, to turn the external dangers into a means of internal strength. But Jefferson was not the man for such a policy, when his antipathy to England and his sympathy for France came into play, and when economical questions constituted an essential factor in the problem to be solved.

CHAPTER VI.

THE EMBARGO.[1] MADISON AND THE SECOND WAR WITH ENGLAND. THE HARTFORD CONVENTION.

Jay's treaty had not removed all the well-grounded grievances of the United States against England, and by degrees new ones were added to the old. The prospects of a friendly understanding were few; partly because Jefferson rode a very high horse, and would accept nothing unless he could obtain everything, and partly because England's attitude, notwithstanding occasional advances, grew more disregardful every day. Napoleon found herein a convenient pretence to assert "might before right" in a still more brutal manner, and it was not long before England and France formally emulated one another in willful alterations in the hitherto recognized laws of neutrality. England's blockade declaration of May 16, 1806, and the order in council of Nov. 11, 1807, on the one hand, and Napoleon's Berlin decree of Nov. 21, 1806, and his Milan decree of Dec. 17, 1807, on the other, were a Scylla and Charybdis, between which the neutral seafaring nations could not possibly sail uninjured. Neither interest nor self-respect could allow the United States quietly to acquiesce in this violence. The Federalists desired to see the knot cut in two. Their programme was to assume a bold

[1] See Hildreth (Hist. of the U. S.) for the history of the diplomatic manœuvres precedent to the struggle which began with the embargo and ended in the war of 1812. In Dwight's History of the Hartford Convention, many of the most important documents are given, some in full and some by extracts. The only worth of that verbose and badly-written book consists in these reprints.

front towards France, and thus induce England to adopt a more favorable policy, provided it were found impossible to make a formal treaty with the latter. Such was, doubtless, the best "political policy" that could be followed. The administration party, on the other hand, would hear nothing of war; it did not want one with France, and it feared one with England. Hence there remained only one thing for it to do: to make reprisals, or to surrender the ocean commerce of the United States until it pleased the two great European powers to conclude peace.

As early as 1806 an attempt was made, by putting obstacles in the way of the importation of British goods, to exert some influence on England. The provisions in question were to go into force in November, but in December the time was extended until the following July. The measures were not sufficient of themselves to obtain the desired object, and by this vacillation the little impression which they had made on England was still farther weakened. Jefferson and the congressional majority, therefore, soon came to the conclusion that it was necessary to take a very decided stand. They resolved, as they supposed, on making extensive reprisals, but as a matter of fact they sacrificed their maritime commerce.

On the 18th of December the president recommended an embargo.[1] Congress immediately took the message under advisement with closed doors. Without taking the least time for deliberation the senate adopted a bill in harmony with the message.[2] In the house of representatives the opposition were not allowed more time, and as the de-

[1] Amer. State Papers, V., p. 258. Statesman's Manual, I., p. 204.

[2] There was a touch of the ridiculous in the over-haste of the senate. John Quincy Adams exclaimed: "The president has recommended this measure on his high responsibility. I would not consider, I would not deliberate, I would act. Doubtless the president possesses further information as will justify the measure." Hildreth, Hist. of the U. S., VI., p. 37.

bates were there also carried on with closed doors, they were completely kept from the people until an accomplished fact was before it. The bill was passed with a few changes, to which the senate immediately agreed, on the 21st of December.[1]

The law was silently received by the population of the commercial states. Since the time of the Revolution the people had always entertained the opinion that the interruption of commercial relations was a very simple and infallible means of defense against any injustice on the part of the European powers.[2] The *National Intelligencer*, which might be considered the semi-official organ of the administration, threatened two years before, in high sounding phrases, the resumption of this policy. The embargo could not, therefore, be a complete surprise, and the tradition concerning its wonderful power was still so prevalent in the commercial states that it was accepted with resignation. It was, however, soon otherwise. The people felt its weight, and before long began to murmur and to murmur the louder, the more apparent it became that the promised effects were not produced, and the more cogently it was demonstrated in congress that they never could be produced, by its means. The demonstration was so incontrovertible, that, after a long struggle, it could not fail to be recognized as conclusive. Jefferson and his unconditional supporters took this all the more to heart, because their opponents thrust sharp thorns into the weakest parts of their policy, which more than once had exposed the country to serious danger. Herein lies the importance of the embargo struggle for the history of the democracy and of the internal conflict of the United States. The Republicans presented on this occasion a striking example of

[1] By 82 against 44 votes. Deb. of Congress, III., p. 641.

[2] Quincy in the house of representatives, Deb. of Congress, IV., p. 107. See also John Adams' interesting letter to Quincy, Dec. 23, 1808. Quincy, Life of J. Quincy, p. 162.

the frivolity and incapacity with which economical questions of national significance have as a rule been treated in congress. The half-educated mediocrity, which has always a broad field of action in the political life of all pure democracies, has probably nowhere shown itself more reckless or more presumptuous. The Federalists rightly claimed that history afforded no other instance in which a government had thus laid violent hands on the economical existence of hundreds of thousands of its citizens. Great blame would therefore have attached to the Republicans, even if their senseless policy had not made the breach between the north and the south greater, after there seemed to be some prospect that it was about to begin to close.

The opposition, to which some Republicans also, like John Randolph, belonged, raised the constitutional question on this occasion. In the debates of the Philadelphia convention the question of the right to lay an embargo was only incidentally touched upon. Madison understood the clause prohibiting the taxation of exports to be a reservation of that right to the general government. Ellsworth opposed this view and the convention clearly agreed with him.[1] No express provision on this subject was incorporated into the constitution. The right claimed by congress was, therefore, to be deduced from its authority to regulate commerce.[2] The opposition acknowledged the correctness of this construction.[3] They did not question the right of

[1] Elliot, Deb., V., p. 455.

[2] Art. I., Sec. 8, § 3. "Mr. McHenry conceived that power to be included in the power of war." Elliot, Deb., V., p. 455.

[3] An attempt was made later to confine the scope of this clause within very narrow limits; but the supreme court favored the most liberal construction which the terms of the constitution would admit of. "Commerce . . . is intercourse. It describes the commercial intercourse between nations and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. . . . It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is com-

congress to lay an embargo, which had already been done in 1794. They insisted only that the embargo of 1807 was unconstitutional for the reason that, unlike that of 1794, it was not limited to a definite time; that an unlimited embargo was not a regulation, but an annihilation, of commerce, which the constitution did not authorize.[1] Much was advanced in favor of this theory which sounded very plausibly, but which was for all that mere declamation. The only thing in the whole debate on the constitutional question which is worthy of mention is the characteristic inconsistency of which the majority were guilty. The Republicans did not hesitate to rely on the introductory words of the constitution, although the orthodox mode of interpretation set up by them declared it to be an absurdity to endeavor to deduce from these any authority whatever.[2] There was scarcely any occasion for such a denial of their old confession of faith. The constitutional question was at least so doubtful that they would have had little to fear from the opposition if the latter had not had other arguments to advance against the embargo. The majority therefore, liked to expatiate on the constitutional question, while the opposition avoided it almost entirely

plete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. . . . The wisdom and the discretion of congress, their identity with the people, and the influence which their constituents possess at elections, are in this, as in many other instances . . . the sole restraints on which they have relied to secure them from its abuses." Marshall, in Gibbons vs. Ogden, Wheaton's Rep., IX., pp. 190, 196.

[1] Ibid, p. 192. Story, the learned commentator on the constitution, who at the time belonged to the Republican party, says: "I have ever considered the embargo a measure which went to the utmost limit of constructive power under the constitution. It stands upon the extreme verge of the constitution, being in its very form and terms an unlimited prohibition or suspension of foreign commerce." Life and Letters of J. Story, I., pp. 185, 186.

[2] Deb. of Congress, III., p. 679. Compare Madison's letter of Nov. 27, 1830, to Stevenson, Niles' Reg., supplement to vol. XLIII., p. 29.

and dwelt on the political and economic side of the question, because here they felt the solid ground under their feet.

The majority urged that the United States could not go to war with England and France at the same time. But the nation's honor and the nation's rights had been ignored by both in the same way; and honor and interest therefore demanded that the same redress should be had for the wrong committed by both powers. As it was not possible to obtain this redress with the sword, it was possible and could be made efficacious, only by the laying of the embargo.

The opposition charged that this mode of reasoning was not only fallacious, but sordid. They claimed that the administration party did not measure the two aggressive powers with the same rule and did not wish so to measure them. The whole world knew what the consequences of the long war with England were to the navy and merchant marine of France, and every child could infer that all the weight of the embargo was intended to rest on England alone. It helped France against England, and it was intended to do so.

This reproach was a blow with a two-edged sword. The old shibboleth of the French and English faction was bandied about once more, and was taken up with eagerness. But it could no longer be represented as self-evident that sympathy with France in opposition to the rest of Europe was synonymous with sympathy for freedom against conspiring tyrants. Napoleon was, as became more evident every day, striving after the supremacy of the world, and England appeared to be the only insurmountable obstacle in the way of the realization of his dream. But too many requisitions had been made on the services of rhetoric to permit them to have their old enchanting power over the American people in the mouth of the emperor. Jefferson and his associates took great care, therefore, not to orna-

ment their policy as openly as they had been wont with the French cockade. But they had by no means completely broken with this part of their past. Whether their devotion to France was still so great that they wished to afford her indirect support in her war with England, has not yet been settled with certainty, and it is doubtful if it ever can be settled. But they were certainly aware that the embargo would not operate to make reprisals on France, and Napoleon did not consider that it did so operate.[1] This was enough to throw a shadow over the political morality of the administration and of the majority of congress, as well as to refute their above-mentioned argument for the embargo. They could not at least clear themselves of the suspicion of a partiality which could be justified on no political or moral grounds, nor could they justly claim that they had thrown dust in the eyes of even one of the offending powers.

And even England had relatively very little to suffer from the embargo. At first it was scarcely heeded, more important events claiming the attention of the country.[2]

[1] General Armstrong, the American ambassador to France, wrote, Aug. 30, 1808: "We have somewhat overrated our means of coercion of the two great belligerents to a course of justice. The embargo is a measure calculated, above any other, to keep us whole, and keep us in peace; but beyond this you must not count upon it." (Dwight, Hist. of the Hartford Convention, p. 96.) Jefferson himself wrote, Oct. 15, 1808, to Rob. L. Livingston (Jeff., Works, V. p. 370): "He [Napoleon] concludes, therefore, as every rational man must, that the embargo, the only remaining alternative, was a wise measure." The duke de Cadore gives still stronger expression to this fact. He writes to general Armstrong, Aug. 5, 1810: "The emperor had applauded the general embargo." Dwight, p. 163. Compare also Deb. of Cong., IV., p. 9. Fisk of Vermont, an ardent defender of the embargo, admitted in the house of representatives in April, 1808, that as regards France the measure had no effect. In the debates on the suspension of the embargo he inquired: "What do gentlemen now ask? That we should open our ports to Great Britain alone: for that would be the effect of raising the embargo." Deb. of Congress, III., p. 691.

[2] Armstrong writes: "In England (in the midst of the more interest-

Besides, it was soon shown that the injuries which England was made to suffer by the embargo were compensated for by many advantages.[1] Moreover, the injury was much smaller than had been expected, even in England. Hillhouse, in the senate, and Quincy and Key, in the house of representatives, did not weary of showing that it was impossible, on account of the great extent of sea-coast, to enforce a strict observance of the embargo.[2] They reaped no advantage, however, from the abundance of actual proof of the assertion that only the conscientious had anything to suffer, while the unscrupulous grew rich, and that England could with little difficulty obtain any desired quantity of American goods. The misfortune was, it was answered to this, that the embargo was not conscientiously observed; that were it only so observed, it would be infallibly attended by the promised results. When it was objected that, in politics, all calculations should be based on what is, and not upon what should be, the declaimers answered that if the people had sunk so low that for the

ing events of the day) it is forgotten." Foreign Relations, III., p. 256. Annals of Cong., 2, X., p. 1684.

[1] "The British ministry also became acquainted about this time [June] with the unexpected and unexampled prosperity of their colonies of Canada and Nova Scotia. It was perceived that one year of an American embargo was worth to them twenty years of peace or war under any other circumstances; that the usual order of things was reversed; that in lieu of American merchants making estates from the use of British merchandise and British capital, the Canadian merchants were making fortunes of from ten to thirty or forty thousand pounds in a year from the use of American merchandise and American capital." Lloyd, of Massachusetts, in the house of representatives, Nov. 21. Deb. of Congress, IV., p. 9. "I consider the embargo as a premium to the commerce of Great Britain." Key, of Maryland, in the same place, Dec. 8, 1808, Ibid, IV., p. 66.

[2] Even John Qnincy Adams, who had just separated himself from the Federalists and joined the administration party, says, in a letter dated Dec. 21, 1808: "The law will not be executed. It will be resisted under the organized sanction of state authority." Niles' Register, XXXV., p. 220.

love of filthy lucre they would not endure such a sacrifice in order to preserve the national honor, they no longer deserved to be free and independent, and that it were better they should return to and be again under English rule.

This much was now granted: that the United States had imposed a sacrifice upon themselves by the embargo. Jefferson, in his message of December 18, 1807, had claimed that its object was the protection of American commerce. The debates in congress, however, leave no doubt that, in reality, the leading thought was the making of reprisals. It was only after experience had shown that as such it was a mistaken measure, that greater stress was laid on the words of the president. But little was gained by the change. Quincy chastised the doctrinarians with his incisive irony, and with equal severity under both subterfuges, so that they were obliged to shield themselves by having recourse now to one and now to the other. He had called the embargo a doubtful, uncertain, difficult, and exceedingly costly measure, but as a protection to American commerce he remarked it was saving the golden egg by killing the goose that laid it.[1]

Quincy's argument could not be refuted. The choice of the shield with which it was now attempted to receive his arrows and those of his associates worthily closed the circle of contradictory absurdities. The representatives of the planters and of the agricultural interests did not wish to concede that the commercial portion of the population had suffered most from the embargo. Such was the zeal with which all parties strove for the honor of being the

[1] "When all the property of a multitude is at hazard, the simplest and surest way of securing the greatest portion is not to limit individual exertion, but to stimulate it; not to conceal the nature of the exposure, but, by giving a full knowledge of the state of things, to leave the wit of every proprietor free to work out the salvation of his property according to the opportunities he may discern." Debates of Congress, III., p. 698.

greatest martyr, that one might believe the embargo had been laid for no other purpose but to test the various degrees of patriotic devotion.

The question, what interests bore the burthen of the embargo, and which the heaviest share of it, was, indeed, important enough. And it became all the more important when it was discovered that it grew more difficult every day to find a satisfactory solution of the question of what was intended by the pursuit of the senseless policy. Only enough was established by this peculiar controversy to show that all interests had suffered severely from the embargo. In order to rescue the ships and their cargoes which the United States would have lost by the unjust procedure of England and France, all their ships must rot in the docks, a large portion of their exports perish entirely, and the rest remain for a long time unrealized upon. The calculation was so simple that even financial artists like Jefferson could not have failed to reach the right result if they had not permitted themselves to be ruled by the idea of making reprisals.

It was quite as easy to discover the proportion in which the different interests had to suffer. The planters' staple articles, principally tobacco and cotton, remained unsold, but the planters themselves suffered relatively but little damage. They were sure of finding a market again as soon as the harbors were open. The farmers sold a considerable portion of their products in the country itself; the rest was for the most part a total loss. The productive industry of the New England fishermen, ship-builders, ship-owners, importers and exporters and all who depended on them, ceased almost entirely.[1]

In this dispute also it is impossible not to recognize a division of parties arising from different interests produced by geographical position, and every struggle in which this

[1] See Deb. of Congress, III., p. 692; IV., p. 64.

played any part became in consequence doubly bitter. The south, which held the balance of power in the reigning party and was primarily responsible, would have least to suffer, if the expectation of a moderate duration of the embargo were realized. The powerless minority of the New England states, the consideration of whose interests, as it was pretended, dictated the measures of the administration, had greatest cause for complaint. The middle states occupied a medium position; their interests unquestionably inclined them more towards the north, but they wavered from one side to the other.

The manner in which the majority exercised their supremacy only added oil to the flames. The administration permitted itself to adopt a mysterious course, proper in a democratic state only when the interests of the country indubitably demand it. This could not be pretended here and in no case was it allowable towards the minority in congress. The majority virtually adopted the standpoint of John Quincy Adams, although it did not announce it as frankly. The president must have reasons for his recommendation, hence,—such was the essence of the defense with which the party, to whom, when in the opposition, no limits to the powers of the government seemed too narrow, gratified their brutal policy. When the minority rose up in righteous indignation against this, the old, worn-out cry of "want of patriotism" and "British faction" was raised again. And when at last the choleric Gardinier of New York, a man of small school education, but possessed of excellent judgment, could no longer control his anger, and spoke the unadorned truth to the house of representatives,[1] his boldness involved him in a duel in which he was

[1] "All our surplus produce shall rot on our hands. God knows what all this means; I cannot understand it. I am astonished; I am dismayed. I see effects, but I can trace them to no cause. I fear there is an unknown hand guiding us to the most dreadful destinies, unseen because it cannot endure the light. Darkness and mystery overshadow this

severely wounded. The whole conflict, as carried on by the administration, was an unworthy spectacle, and a cogent proof that the tyranny of majorities, in a popular state, may often be placed on a footing with the tyranny of absolute sovereigns. If, in the former case, the means of defense are far greater than here, the dangers, on the other hand, are more serious, because tyranny comes clothed in the garb of free institutions. In the instance before us, these dangers were all the greater because threatened by a party which in theory placed no limit to freedom but the widest, and honestly believed itself to be the sole possessor of free tendencies.

But tyranny was bound to come to an end, no matter how great the majority of the administration party. The pockets of the people were made to feel daily that the views advocated by the opposition were the right ones, and this is an argument which no people can long resist. It is exceedingly strange that it took more than a year to prevail. The only explanation is that a majority of the people as well as the president and the majority in congress still adhered to the perverse faith of Revolutionary times in the effects which the interruption of commercial relations with European countries would necessarily produce. The embargo controversy is one of the best illustrations of the tenacity with which this practical people hold in the face of experience to political theories, once they have accepted them as true.

house, and the whole nation. We know nothing, we are permitted to know nothing. We sit here as mere automata. We legislate without knowing, yea without wishing to know, why or wherefore. We are told what to do and we do it. We are put in motion; but how, I for one cannot tell. . . . We are treated as enemies of our country. We are permitted to know nothing and are execrated because we do not approve of measures, the origin and tendency of which are carefully concealed from us. We are denounced because we have no confidence in an executive that refuses to discover to us or to the nation its actual position." Hildreth, Hist. of the U. S., VI., pp. 54, 55.

Nearly all the state legislatures formally approved the embargo. Even New England was represented by New Hampshire, and the legislatures of Massachusetts, Vermont and Rhode Island expressed a desire that Jefferson should be a candidate for the presidency a third time. But the majority over-estimated the value of these manifestations. In the north, the greater part of the population bitterly opposed the embargo, even when they supported the administration in everything else. In the middle states also, the contrary current gained rapidly in strength. In the New York legislature, a resolution favorable to the embargo was carried only by the overpowering influence of Clinton, who had changed his position on the question from personal motives. Its opponents in Maryland by a happy combination obtained the upper hand in the house of representatives for a while. The number of the malcontents in Pennsylvania was considerably increased. And while the president was in receipt of a large number of approving addresses, congress was stormed with petitions, which grew more violent every day, for the raising of the embargo.[1] In short, it became continually more evident in what direction the current of public opinion was setting.

The administration and its supporters in congress did not learn anything better from all this, but, on the contrary, grew more obstinate in their courses. Act after act was passed to enforce the observance of the embargo, and providing means to enforce it which grew to be more and more coercive.[2] This was the best means which could have

[1] Fisk, a warm defender of the embargo, said in the house of representatives, April 13, 1809: "The table of the house has been loaded with petitions against the embargo." Deb. of Congress, III., p. 690.

[2] The administration party adduced as their principal ground of justification that an experiment should be made to ascertain whether the federal authorities had the power to enforce the observance of the laws of the Union. Quincy, in his journal, gives an account of a conversation held by him with Giles, of Virginia: "As to removing the embargo, he was in favor of adhering to it at all hazards. He was in favor of

been found to cause the opposition so to increase in extent and intensity that it would have been the utmost folly to resist it. When the president recommended that the militia should be called out to enforce the law, the smugglers crossed over the Canadian border in armed bands; when he removed a reluctant tax-collector, juries acquitted the violators of the law;[1] when he dispatched gunboats to the eastern harbors, the opposition press struck with increased energy the same threatening key in which it had spoken in 1801, 1803, and 1804.[2] It mattered not how emphatically congress and the administration protested that they had only the best interests of the New England states in view, these were at last firmly resolved not to permit themselves to be economically ruined without offering any resistance, and all for the sake of the theories of those in power. And whence could the administration draw the resolution which would enable it to run the risk of violent resistance on a greater scale, when it was already convinced that war would soon be preferable to the embargo?

Jefferson acknowledges this in his private correspon-

putting to trial what the strength of the federal arm was; and if it was not sufficient to enforce its own laws, it might as well be known now as hereafter." Quincy, Life of J. Quincy, p. 143. Compare Ibid, p. 151. The Union has had to pay dearly for the failure to make this trial more frequently. The claim was in poor keeping with the conduct of the party during the administrations of Washington and Adams.

[1] An article authorized by J. Q. Adams, in the *National Intelligencer* says: "The people were constantly instigated to forcible resistance against it [the embargo], and juries after juries acquitted the violators of it upon the ground that it was unconstitutional, assumed in the face of a solemn decision of the district court of the United States." Niles' Register, XXXV., p. 138. In a precisely similar manner Adams, in a letter dated Dec. 21, 1808, describes the course of the opposition in Massachusetts. Ibid, XXXV, p. 220.

[2] See a number of characteristic examples in Randall, Life of Jeff., III., pp. 282, 283.

dence, in June, 1808.[1] Spite of this, however, the opposition was obliged to hear for half a year more, with undiminished bitterness, that it had wished, Judas-like, to bargain away the honor and independence of the country. In January, 1809, Nicholas, of Virginia, the leader of the administration party in the house and the special mouthpiece of the president, made public avowal of the change of front. He introduced a resolution which deserves to be cited verbatim. It reads: "*Resolved*, as the opinion of this house, that the United States ought not to delay beyond the — day of ——— to repeal the embargo laws, and to resume, maintain, and defend the navigation of the high seas against any nation or nations having in force edicts, orders, or decrees violating the lawful commerce and neutral rights of the United States." He desired that the first of June should be fixed as the date of the repeal of the law.

Translated into the plain language of every-day life, this resolution meant: "England and France have allowed themselves to violate the rights which are ours by the law of nations. To protect ourselves and punish these powers, we have, for thirteen months, renounced completely the exercise of the right which they had in part violated. We now inform them that we shall persevere in this policy four months longer. If by that time they do not promise to deal more equitably with us, we shall be compelled to surrender this policy, because we suffer too much from it. We shall, at the end of that time, resume the exercise of

[1] He writes to Dr. Leib, June 23: "It is true the time will come when we must abandon it. But if this is before the repeal of the orders of council, we must abandon it only for a state of war. The day is not distant when that will be preferable to a longer continuance of the embargo. But we can never remove that, and let our vessels go out and be taken under these orders without making reprisals. Yet this is the very state of things which these federal monarchists [!] are endeavoring to bring about, and in this it is but too possible they may succeed." Jeff., Works, V., p. 304.

our rights, and, if necessary, defend them." Was it possible in a few words to give a more destructive criticism of the policy of the administration than the administration party had itself here given expression to?

The opposition would, of course, not listen to this "conditional declaration of war," as Dana, of Massachusetts, called the resolution. The administration party had virtually lost its cause, and the opposition did not wish to come to an agreement with it on terms thus easy. In a democratic republic a policy in direct conflict with the interests of the country can be prosecuted only so long as the majority of the people remain ignorant of its true character and consequences, and the government continues consistent in its error. When the people awake to a correct understanding, and the government concedes its error conditionally, or in part, the opposition must be very badly led if it does not in a short time achieve a complete victory.

In the opposition states, the administration was allowed to know the minds and feelings of the people more unreservedly than ever.[1] In congress the opposition continued its attacks with redoubled energy and the hitherto serried ranks of the administration began to show marks of demoralization with astounding rapidity. From among themselves they were destined to hear a voice, recalling to their memory the principle which is the kernel of the idea of the republican state, viz.: that it is the spirit and the duty of republican governments to make laws agreeable to the people, and not to endeavor to accommodate the people

[1] Thus the Massachusetts senate declared: "The people of New England perfectly understand the distinction between the constitution and the administration. . . . On such occasions passive obedience would, on the part of the people, be a breach of their allegiance, and on our part, treachery and perjury. The people have not sent us here to surrender their rights, but to maintain and defend them; and we have no authority to dispense with the duties thus solemnly imposed." Hildreth, Hist. of the U. S., V., p. 116.

to the laws. Their charge that the opposition was fed only by the British and "monarchical faction" was of no avail, for their staunchest supporters declared now with solemn earnestness, that the whole north was of one opinion on this question.[1] The fate of Nicholas's resolution was proof enough of this. No time was allowed to those who had remained true to the administration to collect their thoughts. The deserters from the party went so far even as to offer their aid to hoodwink them by a parliamentary stroke. Nicholas had so amended his resolution on the 30th of January, that letters of marque and reprisal were to be issued in case the objectionable orders of the powers were not recalled at the date to be determined on. The opposition moved for a division of the question, and obtained it, because the majority were completely surprised by the motion. The motion supported by the administration, to fix the 1st of June as the date of the raising of the embargo, was rejected, and the 4th of March fixed instead.[2] After the first part of the resolution was thus adopted with this amendment by seventy-six votes, the second part was rejected by fifty-seven against thirty-nine votes.

Jefferson was very much surprised by this defeat just before his retirement to private life.[3] He could not ex-

[1] Cook, a Republican member of the Massachusetts house of representatives, said: "The south say embargo or war; the north and east say, no embargo, no war. . . . To comply with the general wish of the north, the embargo acts must be repealed at an early day." Hildreth, VI., p. 127. Story writes, Jan 4, 1809: "The southern states are all for a continuance; the middle and western are all ready to unite in any measure. But with very few exceptions, the Republicans from New England receive almost daily letters which urge a repeal." Life and Letters of J. Story, I., p. 174.

[2] The number of those voting "aye" was seventy; the number voting "no" is not given. Annals of Congress, 1808-9, p. 1334. Hildreth erroneously gives the 1st of March as the date.

[3] Quincy writes to John Adams, Dec. 18, 1808: "Fear of responsibility

plain this sudden revolution of opinion.[1] Notwithstanding his confession to Dr. Leib, seven months before, he now said that the "pseudo-Republican" Story was responsible for the whole misfortune, and that the removal of the embargo had inflicted an incurable wound on the interests of the country.[2]

and love of popularity are now master passions and regulate all the movements. The policy is to keep things as they are, and wait for European events. . . . The presidential term will have expired, and then away to Monticello, and let the———take the hindmost. I do believe that not a whit deeper project than this fills the august mind of your successor." Quincy, Life of J. Quincy, p. 146. Jefferson's character and his personal attitude towards the embargo question during the last months of his administration are described in these few words with masterly skill.

[1] "I thought congress had taken their ground firmly for continuing the embargo till June, and then war. But a sudden and unaccountable revolution of opinion took place the last week, chiefly among the New England and New York members, and in a kind of panic they voted the 4th of March for removing the embargo, and by such a majority as gave all reason to believe they would not agree either to war or non-intercourse." Jefferson to Th. M. Randolph, Feb. 7, 1809. Jeff., Works, V., p. 424.

[2] July 16, 1810, he writes to Dearborn: "The Federalists, during their short-lived ascendency, have, nevertheless, by forcing us from the embargo, inflicted a wound on our interests which can never be cured, and on our affections which will require time to cicatrize. I ascribe all this to one pseudo-Republican, Story. He came on . . . and staid only a few days; long enough, however, to get complete hold of Bacon, who, giving in to his representations, became panic-struck, and communicated his panic to his colleagues, and they to a majority of the sound members of congress. They believed in the alternative of repeal or civil war, and produced this fatal measure of repeal." Jeff., Works, V., p. 529. On the other hand, he writes to W. B. Giles, Dec. 25, 1825: "He [John Quincy Adams] assured me that there was eminent danger that the convention [of the New England states] would take place; and that to enable its [the Union's] friends to make head against it the repeal of the embargo was absolutely necessary. I expressed a just sense of the merit of this information, and of the importance of the disclosure to the safety and even the salvation of our country; and however reluctant I was to abandon the measure (a measure which, persevered in a little longer, we had subsequent and satisfactory assurance, would have effect-

There was an element of truth in this view of Jefferson. The terror which had taken hold of the majority was indeed exaggerated. Heavy as the embargo weighed on the northern states, it might have been continued some time longer without any danger of entailing civil war. The majority soon perceived that they had too hastily dropped their arms, and the partial resumption of the policy hitherto pursued by them was far from leading to an immediate crisis. The more moderate agreed, before the adjournment of congress, on the Non-intercourse Act,[1] which postponed the raising of the embargo to the 15th of March, and allowed it to remain in force so far as France and England were concerned to the end of the next session of congress. Even this partial success of the opposition was sufficient to operate powerfully as an appeasement of the excitement. The masses had not as yet formed such an idea of

ed its object completely) from that moment, and influenced by that information, I saw the necessity of abandoning it, and instead of effecting our purpose by this peaceable weapon we must fight it out, or break the Union. I then recommended to yield to the necessity of a repeal of the embargo, and to endeavor to supply its place by the best substitute in which they could procure a general concurrence." Jeff., Works, VII., pp. 425, 426. There is no reason to ascribe this evident contradiction to an impure motive. Jefferson was then 83 years old, and his memory may therefore have proved treacherous. Story writes in his autobiography: "Mr. Jefferson has honored me by attributing to my influence the repeal of the embargo. I freely admit that I did all I could to accomplish it, though I returned home before the act passed. The very eagerness with which the repeal was supported by a majority of the Republican party ought to have taught Mr. Jefferson that it was already considered by them as a miserable and mischievous failure. . . The truth is, that if the measure had not been abandoned when it was, it would have overturned the administration itself, and the Republican party would have been driven from power by the indignation of the people, goaded on to madness by their sufferings." Story, Life and Letters of J. Story, I., p. 185. In a letter to Everett he says: "The credit of it [the repeal of the embargo] is due to the firmness and integrity of Mr. Bacon." Ibid, I., p. 187. Quincy agrees in this opinion. Life of J. Quincy, p. 185.

[1] Annals of Cong., 2, X., 1824; Stat. at L., II., p. 528.

the ruinousness of the policy of the administration as to seriously threaten the power of the Republicans. They could again go back immediately, slowly but surely, over the road which naturally ended in an unnecessary and not very honorable war; a war which, it is true, was not fruitless, but which left all the questions for which it was waged unsolved. They could with impunity venture to introduce their policy anew, by a second embargo of ninety days, and during its continuance to lay a third one. At last, indeed, the Federalists enjoyed a great moral triumph, for the president himself recommended its recall; but Jefferson's unfortunate policy had already borne fruit in abundance.

The haste which characterized the course of the Federalists when the dismay of the northern Republicans afforded them the opportunity of a partial victory in February, 1809, was therefore, a great political mistake. Since Hamilton's death they were wanting in a leader with the coolness of judgment absolutely necessary to turn the errors of their opponents completely to account. They wasted their ammunition in useless demonstrations and petty skirmishes, and could therefore never engage in a decisive battle. Had they had to deal with statesmanlike talent of a higher order, they might perhaps have been schooled by the contest to pursue their endeavors towards the realization of their more correct political ideas in a more efficient manner.

The ultimate cause of their mistake was, as on so many former occasions, that they had not discovered the right political point of view. They over-estimated the momentary excitement of the masses, and under-estimated their loyalty to the federal authorities and their fidelity to the Union. The Republicans had repeatedly fallen into the same mistake when they were in the opposition, and they now committed the very same errors in their calculations. Hence the "panic terror" on their part, and on the part of the Federalists the haste to take advantage of it. The

majority of American historians have made use of this circumstance to paint the tendencies of the opposing party towards resistance or separation in individual cases in too glaring colors, or to deny that disloyal plans had been devised or the thought of secession seriously entertained by their own party. Judged from an impartial standpoint, the fact that the possibility of a civil war or of a division of the Union was so frequently, and on relatively insignificant occasions, thought of on both sides, may be taken as a measure of the degree of consolidation the Union had attained at the time. The leaders undervalued the solidarity of material interests which already obtained, and the instincts of the people were therefore juster than the well-pondered judgments of the leaders. On the one hand, the conflict of interests and the particularistic tendencies of the masses were yet so great that the leaders were always goaded into a policy disloyal and particularistic in its tendencies, and they found so much sympathy with the masses that what at first were only thoughts soon ripened into plans. On the other hand, the solidarity of interests, and the national feeling which it fed, were already so strong that the masses refused their services even before the plans had gone so far as to find expression in an attempt at action.[1]

[1] "It is a melancholy reflection—a subject that excites our best and inmost feelings—that projects or speculations, as to a dissolution of this Union, have been so frequently indulged. That leading men in Virginia looked to a dismemberment in 1798-9, when the armory was built, etc.,—that Burr and his confederates had an eye to the establishment of a western government, in 1805-6,—that many contemplated a building-up of the 'nation of New England' from 1808 to 1815,—and that now [1828] some in the south are calculating a division at the Potomac, seems to us undoubted; but the lengths to which either party proceeded or will proceed rests very much on conjecture or depends on opinion. . . . These are fearful things to think of. But whatever have been, or may be, the designs of individuals, we have always believed, and yet trust, that the vast body of the people ever have been, and are, warmly attached to the Union; and that it never perhaps was really more strong than when it seemed most endangered, even during the darkest period of the late war." Niles' Reg., XXXV., p. 210.

It mattered not how often the laboring mountain had given birth to nothing greater than a mouse, the labor itself and the political judgment of American statesmen are not on that account to be lightly estimated. The actual condition of affairs presented so unusual a complication of positive and negative factors so peculiarly grouped that it was, indeed, no easy matter to discover their sum-total.

European statesmen, who observed from the nearest point, fell into the same error. In February, 1809, Sir James Craig, governor of Canada, sent a secret agent, Henry by name, to Boston. His main task was to form an opinion as to how great or how small the prospects of the Federalists were to obtain control of the country, and how far they would feel inclined in case of a disruption of the Union to look for support to England.[1] In very general terms, but in such as were easily intelligible, his instructions further directed him to find out from the leaders of the Federalists, whether England, in case of a war with the United States, could, to a certain extent, rely on them, and in what manner indirect support was to be expected from them. Jefferson asserts that John Quincy Adams said at the time that this was to be done, according to Craig's plan, by a declaration of neutrality.[2]

[1] Sir James Craig to Henry, Feb. 6, 1809: "It has been supposed that if the Federalists of the eastern states should be successful in obtaining that decided influence which may enable them to direct the public opinion, it is not improbable that rather than submit to a continuance of the difficulties and distress to which they are now subject, they will exert that influence to bring about a separation of the general union. The earliest information on this subject may be of great importance to our government, as it may also be, that it should be informed, how far in such an event they would look up to England for assistance, or be disposed to enter into a connection with us." Dwight, Hist. of the Hartford Convention, p. 200.

[2] Jefferson to John Adams, April 20, 1812: "He [J. Q. Adams] stated a particular which Henry has not distinctly brought forward, which was, that the eastern states were not to be required to make a formal act of separation from the Union, and to take a part in the war against it, a

Henry himself became convinced after a short time that his mission would remain fruitless.[1] The Federalists, later, relying on this declaration, represented the whole plan as an absurdity *ab initio*. Henry's disclosures were certainly not worth the $50,000 which Madison paid for them, but the plan cannot be looked upon as the clumsy mystification of a common cheat, simply because it remained without results. Henry had come to Boston at an unfortunate moment. After the partial removal of the embargo and the acceptance of the friendly proposals of Great Britain through Mr. Madison, he could expect no advances from the extreme Federalists.[2] But it does not follow from this that he would have met the same reception if the administration party had not yielded, as up to February seemed probable. One of the most distinguished sons of whom Massachusetts can boast was of opinion that Henry would have found support enough for his operations, if the policy hitherto pursued had been persevered in. As early as November, 1808, John Quincy Adams expressed the fear that this might lead to civil war.[3] Later he claimed to have "unequivocal evidence" tending to show that there was a sys-

measure deemed much too strong for their people: but to declare themselves in a state of neutrality, in consideration of which they were to have peace and free commerce, the lure most likely to ensure popular acquiescence." Jeff., Works, VI., p. 50.

[1] He writes, May 25, 1809: "I beg leave to suggest that in the present state of things in this country, my presence can contribute very little to the interests of Great Britain." Niles' Reg., II., p. 25. The whole correspondence bearing on this subject is to be found in Ann. of Congress, 1, XII., p. 1162, etc.; Foreign Relations, III., p. 545, etc.; Niles' Reg., II., p. 19, etc.

[2] See Henry's letters of the 5th and 25th of May.

[3] "Between the embargo and the non-intercourse system, under my present state of information, I should strongly incline to the last. It would, indeed, incur new hazard of eventual war abroad, but I think it would remove the risk of war at home for the present." Nov. 17, 1808. Niles' Register, XXXV., p. 220. Compare also the letters from Desausure, Dec. 7, 1808, and Jan. 21, 1809, and from Crafts, Jan. 30, 1809, to Quincy. Life of Quincy, pp. 189–192.

tematic attempt making to dissolve the Union. In his opinion New England would have undoubtedly made sure of the assistance of Great Britain if the administration had made civil war inevitable by an effort to overcome the resistance to the embargo by force.[1]

The Federalists, on whom in particular the suspicion would rest, declared Adams's disclosures to be malicious calumnies, wanting foundation in fact. How far Adams's works and correspondence, the publication of which is going on, will contain proofs of his assertion, it is impossible to conjecture. The accuser and the accused were both honorable men, whose words had equal weight, but of course the burden of proof is on the former. As long as this has not been produced, equity demands that the peculiar position in which Adams was placed at the time should be considered in favor of the party accused. He

[1] In an article in the *National Intelligencer* of Oct. 21, 1828, authorized by Adams, we read: "A separation of the Union was openly stimulated in the public prints, and a convention of delegates of the New England states to meet at New Haven was intended and proposed. . . He [Adams] urged that a continuance of the embargo much longer would certainly be met by forcible resistance, supported by the legislature, and probably by the judiciary of the state. That to quell that resistance, if force should be resorted to by the government, it would produce a civil war; and that in that event, he had no doubt the leaders of the party would secure the co-operation with them of Great Britain. That their object was, and had been for several years, a dissolution of the Union and the establishment of a separate confederation, he knew from unequivocal evidence, although not provable in a court of law; and that in case of a civil war the aid of Great Britain to effect that purpose would be as surely resorted to as it would be indispensably necessary to the design." Niles' Register, XXXV., p. 138. Story writes Jan. 4, 1809: "If I may judge from the letters I have seen from the various districts of Massachusetts, it is a prevalent opinion there, and in truth, many friends from the New England states write us that there is great danger of resistance to the laws, and great probability that the Essex junto have resolved to attempt a separation of the eastern states from the Union; and if the embargo continues that their plan may receive support from our yeomanry." Life and Letters of J. Story, I., p. 174. Compare also Ibid, p. 182.

had just separated from the Federalists, and was a warm advocate of the most essential points of the policy of the administration, although he did not go over formally and entirely to the Republican camp. The odium which he thereby drew down upon himself might, indeed, have influenced him so far as to cause him to see more than there really was to be seen. This assumption gains in probability from the fact that he was not free from the morbid distrust and the consequent easy credulity which were the most prominent features in his father's character. On the other hand, his whole political life is a sufficient guaranty that he would not have made the charges if he had not been perfectly satisfied of their truth, and he was in a position to obtain complete and reliable information in regard to them. The final decision of history must therefore remain suspended. To the more important question, however, what prospect there was of the probable success of Craig's and Henry's plan, if the reigning party had not in part retraced their steps, the history of the following years gives a satisfactory answer.

One of the principal arguments by which the administration had, from the beginning, defended the embargo, was that the only choice lay between the embargo and war, and that war should be avoided as long as possible.[1] The ultra-Federalists censured this view as one of impotent cowardice. In the winter of 1805–6, the most important commercial towns of the northern and middle states sent memorials to congress, in which they urged it to an energetic defense of the rights granted to neutrals by international law, in the interest of American commerce The memorials were couched throughout in the most de-

[1] "If we had put the question to every man in the nation, the head of a family, whether we should go to war or lay an embargo (the only choice we had) nineteen out of twenty would have voted for an embargo." Williams, of South Carolina, Dec. 9, 1808, in the house of representatives. Deb. of Cong., IV., p. 76. Ibid, pp. 13, 14, 41, 57, 78.

cided terms, and some of them declared that war might perhaps be necessary for the protection of the rights and honor of the country.[1] Later the administration party was obliged to hear that it was impossible to "kick" it into a war. But the more the damage which commerce had sustained from the violation of the neutrality laws and the irrational policy of the administration was felt, the less loud grew the warlike tone of the Federalists. At first they denied that the choice really lay only between subjection, embargo, and war; then they reproached the majority that by their shyness of war they made war inevitable, and besides, that they did not seem to see that if there should or must be war, it were better it should be begun before the strength of the country had been weakened by the embargo; and lastly, they adopted as their battle-cry against the Republicans unconditional opposition to a war with England.

The administration party took at the same time a still more radical turn and in the opposite direction. The determining influence was exercised here by the extreme Republicans of the south and the representatives of the young western states. Williams of South Carolina was still of opinion in December, 1808, that by a war they had nothing to gain and everything to lose.[2] And yet if the embargo was not removed, he declared himself rejoiced at the opportunity afforded by Jackson's motion of registering his vote for the war.[3] One year later, Clay, who already carried great weight, spite of his youth, made an equally frank declaration in the senate. With the profuse rhetoric of youth, and genuine American self-admiration, he avowed most candidly that, in case of a war, it would

[1] See the extracts from a number of these memorials in Niles' Reg., VII., pp. 327–329.

[2] "The people have nothing to gain by war, nothing by bloodshed; but they have everything to lose." Deb. of Congress, IV., p. 76.

[3] Hildreth, Hist. of the U. S., VI., p. 136.

not only be necessary to look to the defense of the country, but that the conquest of Canada should be kept in view.[1]

Clay was elected a member of the house of representatives the following year, and was chosen speaker. He used the disproportionately great influence of his position[2] with masterly skill and astounding recklessness to realize the idea proposed in the above programme. He appointed Calhoun, who had been elected to congress for the first time, the second member of the important committee of foreign affairs, and he (Calhoun) soon became its actual head. The first month of the session had not yet passed, when the two young zealots had brought it to such a pass that they could proclaim as a fixed resolution, what a year and a half before, Clay had given expression to as an eventual wish. On the 29th of November, 1811, the committee on foreign affairs made their report, and laid a mass of resolutions before the house.[3] The report recited: "Forbearance has ceased to be a virtue. . . . The period has arrived when

[1] "Your whole circle of commercial restrictions . . . presented resistance—the peaceful resistance of the law. When this is abandoned without effect, I am for resistance by the sword. . . . It is said, however, that no object is attainable by a war with Great Britain. In its fortunes we are to estimate not only the benefit to be derived to ourselves, but the injury to be done the enemy. The conquest of Canada is in your power. I trust I shall not be deemed presumptuous when I state that I verily believe that the militia of Kentucky are alone competent to place Montreal and Upper Canada at your feet. . . . Is there no danger that we shall become enervated by the spirit of avarice unfortunately so predominant? . . . A certain portion of military ardor (and that is what I desire) is essential to the protection of the country. . . We shall want the presence and living example of a new race of heroes to supply their [the heroes of the revolutionary war] places, and to animate us to preserve what they have achieved." Deb. of Congress, IV., pp. 177, 178. The plan, however, haunted the heads of the younger politicians a year earlier. See Quincy's speech of the 19th of Jan., 1809. Life of Quincy, p. 176. Compare also, Ibid, p. 203.

[2] The speaker of the house has been rightly styled the second personage in the republic.

[3] Niles' Reg., I., pp. 252, 254.

in the opinion of your committee it is the sacred duty of congress to call forth the patriotism and resources of the country." The resolutions among other things asked for an increase of the regular army by the addition of ten thousand men, and that the president should be authorized to call volunteers to the number of fifty thousand under arms. Randolph said during the debates on the report that the question lay between peace and war, and that war, a war of conquest against England.[1] Wright of Maryland claimed, on the other hand, that there was no longer any question of peace; that there was no choice but subjugation or war.[2] The committee itself left no doubt as to what was intended by the resolutions. Calhoun expressly declared that the proposed measures had a meaning only when they were looked upon as a preparation for war and that war could not be declared at once, only because the country was not ready for it.[3] The house adopted both the resolutions, one by one hundred and ten to twenty-two and the other by one hundred and thirteen to sixteen votes.[4] By an overpowering majority, it resolved also that the war should begin as soon as the necessary preparations were made; for this is the legitimate interpretation, which, according to Calhoun's declaration, is to be put on the vote.

Randolph had said in his great speech of the 10th of December, that the committee had gone farther than the president. Madison was, indeed, far from being able to master the situation. Endowed by nature with a clearer insight into matters of state and with a much finer moral

[1] Deb. of Congress, IV., pp. 436, 438.

[2] Ibid, IV., p. 445.

[3] "I certainly understand that the committee recommended the measures now before the house as a preparation for war; and such in fact was its express resolve, agreed to, I believe, by every member, except that gentleman [Randolph]. . . . Indeed the report could mean nothing but war or empty menace." Calhoun's Works, II., p. 2.

[4] Deb. of Congress, VI., p. 465.

constitution than Jefferson, he became like wax in his hands, once the Republican party had permanently obtained the mastery in Virginia. The gift of persuasion which he possessed in an eminent degree, and which made him an invaluable ally, became almost ruinous to him. When there were obstacles placed in the way of his ambition, which his moral sense would not permit him to evade, his judgment was wont to be misled by his sharp and flattering logic. The impulse in this direction he always received from others. He was deficient in the independence and energy of will which are the necessary requisites of a great political leader. Hence, while he always remained a political attorney of extraordinary ability, he never rose to the height of the statesman. These were qualities which eminently qualified him to serve as the right-hand man of his predecessor in the presidency. But when he was himself placed at the head of the state, he found himself entangled in a terrible net, which he had wrought with his own hands. He was not the man to tear it to pieces with quick resolution. And his participation in the ruinous work was so great that he could not see that the net could be unraveled with success only on condition that the work was begun without delay and prosecuted in accordance with a well-matured plan. But even if he had seen it, he would scarcely have taken such a resolution, for, in doing so, he would have been passing judgment not only on Jefferson, but on himself. Besides, now that the decision rested with him, his real nature got the better of him. Moderate in his thought and judgment, he had always cautiously felt his way towards a middle course, in which he followed only his own mind and inclinations. Under the burthen of responsibility, this commendable moderation was now transformed into a painful uncertainty. Whatever was positive in the programme devised by Jefferson crumbled away like baked sand in his hands. The state of the country demanded more imperatively every

day, that a decided initiative should be taken, but the man whose duty it was to take it was wanting not only in the necessary qualities of character, but his whole programme was, like that of the opposition, a purely negative one.[1]

Under such conditions, the field belongs, in a popular state, to those possessed of the courage to resolve and do. The *homines novi* in congress had this courage, and Madison therefore became their tool. Their unsatiated ambition expected to earn in war, in rich abundance, the laurels which the contest over questions of internal politics offered them little prospect of winning in the near future, because the Democrats[2] were possessed of an overwhelming preponderance.

That there had been for years sufficient cause for war, cannot be questioned, but it was, notwithstanding, the work of a small, ambitious party in congress. The country was drawn into it, although the opposition party condemned it in a manner and to an extent which excited fear of forcible resistance and of treason; although the bearer of the executive authority and the head of the party did not desire it, and spite of the fact that only a small minority considered it really inevitable and wished for it with unaffected enthusiasm. This is a remarkable instance how little, under certain circumstances, even among peoples who rejoice in the most unlimited self-government, there is, in truth, any self-government, and how often facts give the lie to the principle of the sovereignty of the majority.

The war party obtained control in congress because vanity and the party interests of the majority prevented their acknowledging their former mistakes. They had imposed every kind of restriction on commerce, and all that they had accomplished was to seriously damage their

[1] Compare Quincy's opinion. Life of Quincy, p. 204.

[2] The names Republicans and Democrats were for a long time used indifferently. From the 9th congress, the latter designation began to encroach upon the other.

own interests.[1] So long as it would not be conceded that the idea which lay at the foundation of these restrictions was a false one, it was necessary to hold that there was no choice except between them and war, and that policy and good morals had operated for a decision in favor of the lesser evil, so long as by this means the attainment of the wished-for end still seemed possible. From this it directly followed not only that war was justifiable, but that it should be declared necessary.

The same burden of logical consequences, drawn from premises which he had made himself, weighed heavily on Madison. The enthusiasts in favor of war were in a condition to give importance to another element, and this decided the issue. The presidential election was impending, and the war party made the unconditional adoption of their policy a *sine qua non* of his renomination.[2] That

[1] It has already been remarked that the planters had least to suffer from the embargo. But it is evident that the grounds above adduced could produce the effects mentioned only during a short time. When the restrictions on commerce had lasted for years, the planters' states, poor in capital and in manufactures and obliged to obtain the greater part of the necessaries of life from the west, suffered most from it. Randolph says in his speech of Dec. 10, 1811: "By a series of most impolitic and ruinous measures, utterly incomprehensible to every rational, sober-minded man, the southern planters, by their own votes, had succeeded in knocking down the price of cotton to seven cents, and of tobacco (a few choice crops excepted) to nothing, and in raising the price of blankets, coarse woolens, and every article of first necessity, three or four hundred per cent." Deb. of Cong., IV., p. 438. Th. Pinckney, of South Carolina, wrote May 25, 1808: "We are here smarting under the effect of the embargo." Quincy, Life of J. Quincy, p. 140. Quincy writes in his diary, Nov. 8, 1808: "In the evening, Lewis, of Virginia, called on us. He represented the sufferings of that state under the embargo as extreme;" and on Nov. 16, "Conversation with J. Randolph. He said the embargo was ruining Virginia." Ibid, p. 143.

[2] The fact was so notorious that it was mentioned in the most direct way in congress. Said Quincy, on the 5th of January, 1813, in the house of representatives: "The great mistake of all those who reasoned concerning the war and the invasion of Canada, and concluded that it

the threat could be carried into effect was to be looked upon as certain; for Monroe and Clinton were already prepared to accept the nomination from the war party, and this party could not, therefore, be at a loss for candidates. Madison was not a man of such rigid moral firmness that his convictions could have withstood such a temptation. He fell a victim, like others before him, and like men of the greatest political talents after him, to the presidential fever. Clay and Calhoun, who had mainly abetted him in this bargain, which was made at the expense of the country, afterwards wasted away under the influence of the same incurable malady.

Madison was forced farther step by step. At first he was compelled to write a confidential message which recommended an embargo of sixty days.[1] Grundy, of Tennessee, replied, on inquiry, in the name of the committee on foreign relations, that it was to be looked upon as the immediate precursor of war.[2] Clay and Smilie agreed in this view, and expressed their great satisfaction that the matter had progressed so far.[3]

Randolph had called attention to the fact that the embargo had not in reality originated with Madison.[4] True, Calhoun and Grundy contested his assertion; but it was

was impossible that either should be seriously intended, resulted from this that they never took into consideration the connection of both these events with the great election for the chief magistracy, which was then pending. It never was sufficiently considered by them that plunging into war with Great Britain was among the conditions on which the support for the presidency was made dependent." Deb. of Cong., IV., pp. 629, 630.

[1] April 1, 1812. Statesman's Man., I., p. 292.

[2] "Mr. Grundy said . . . that he understands it as a war measure, and it is meant that it shall lead directly to it; that with any other view there was no propriety in it; as a peace measure he had no idea that the president would have recommended it, nor would the committee have agreed to it." Deb. of Cong., IV., p. 544.

[3] Ibid, IV., pp. 545, 546.

[4] Ibid, IV., p. 546.

their well-settled policy to make the president the mouthpiece by which they made known their resolutions. Madison had already given evidence of his willingness to sign a declaration of war. But this did not satisfy the war party. They wanted him not only to join them, but to completely identify himself with them. He was informed that he would have either to do without their support, or to prevail on congress to make the declaration of war. He yielded, and sent congress another confidential message, in which he laid before it at length the wrongs which had been inflicted. England, he said, was already practically at war with the United States, and it was now incumbent on congress to decide whether force should be opposed to force.[1]

This virtually decided the triumph of the war party; but they nevertheless followed up their victory with such impetuosity, that it seemed they were not completely sure of it until it was an accomplished fact. On the 3rd of June, Calhoun, in the name of the committee on foreign affairs, presented a report on the message to the house in which he recommended "an immediate appeal to arms."[2] He moved at the same time that a formal declaration of war against Great Britain should be made, and it was passed to a

[1] "We behold, in fine, on the side of Great Britain a state of war against the United States, and on the side of the United States a state of peace toward Great Britain. Whether the United States shall continue passive under the progressive usurpations and these accumulating wrongs, or, opposing force to force in defense of their national rights, shall commit a just cause into the hands of the Almighty disposer of events . . . is a solemn question which the constitution wisely confides to the legislative department of the government. In recommending it to their early deliberations I am happy in the assurance that the decision will be worthy the enlightened and patriotic councils of a virtuous, free, and powerful nation." State Papers, VIII., p. 132. Statesman's Manual, I., pp. 297, 298.

[2] Deb. of Congress, IV., pp. 554–558.

third reading on the following day by a vote of seventy-nine to forty-nine.[1]

The senate did not show the same zeal. Now that the last bridge was to be cut down, a part of the Democrats began to waver to such an extent that the motion made by Gregg of Pennsylvania, to recommit the bill providing for the declaration of war, was adopted on the 11th of June, by seventeen votes to thirteen.[2] Not until the 17th of June, did a sufficient number of reluctant Democrats yield, to allow the amended bill to be passed to a third reading by a vote of nineteen to thirteen.[3] The house agreed to the amendments on the following day.

The majority had repeatedly recognized that the Federalists had carried on their opposition during the whole session of this congress in a most worthy manner. The war party rewarded this course of theirs by the most reckless uses of its power. The transactions of the house were carried on in a manner which suggested rather a conclave of tyrants than the legislative body of a free people. Since the beginning of the new difficulties with England, the most important papers were kept from congress by the executive authority; and the minority might deem themselves happy when their demands for the suppressed documents were received with an observance of at least external decorum. And the majority of the people said amen to it, when with blind-folded eyes they were carried on

[1] Deb. of Congress, IV., p. 559. The declaration of war thus received a majority of only thirty votes, although the democratic majority in the full house (one hundred and forty-two members) was seventy

[2] Ibid, IV., p. 416.

[3] Six Democrats voted to the last with the Federalists. Bayard declared on the 16th of June: "When the bill before us was first brought up from the other house, it was the opinion of very few that it would obtain the support of a majority of the body; and even now it was likely to pass, not because it was approved by a majority, but of the differences of opinion which existed among gentlemen as to other courses which had been proposed." Deb. of Congress, IV., p. 419.

from one folly to another, till finally they were dragged into war. The high-sounding hymns to Freedom, the People and Self-government directed their eyes away from the unworthy game which their delegates were playing with them. The principle of the necessity that the majority should rule was carried to the greatest extreme, and the principle no less true, that the conscientious respect of the rights of the minority is the condition precedent of a rational republic, was forgotten — nay, not even as much as conceived. Time was not left to the opposition to develop their views on the most important questions, nor was an opportunity offered them to bring them before the people at the right time. The debates on the embargo recommended by Madison on the 1st of April, 1812, were carried on with closed doors, and after the committee had made its report, the war party desired to have it carried through in a single day. Nelson wanted time for consideration. Quincy requested the house to accord one day more for debate, in order that he might take part in it. Widgery answered that the responsibility rested on the majority, and Quincy's motion was defeated by a vote of fifty-seven to fifty-four.[1] The debates on the declaration of war, also, were carried on in the same manner. Randolph's motion to open the doors was rejected by a vote of seventy-seven to forty-five. Milnor renewed the motion on the next day, but it met with the same fate. And when the third reading of the bill was resolved upon, Stow asked that it should be postponed to the following day, but this motion also received only forty-eight ayes to seventy-eight nays.[2]

In this way a surprise was prepared for the people. They learned on the 18th of June that they were at war with the greatest naval power in the world. There was no effort

[1] Deb. of Congress, IV., p. 547.
[2] Ibid, IV., pp. 558, 559.

made to justify this except in the ingenuous manner adopted by Widgery.

Thirty-four representatives of the minority published a vigorous protest, in the form of an address to their constituents, both against the war and the manner in which the declaration of war was brought about.[1] They would have no share in the misfortunes which would grow out of the war. When they were refused the privilege of public debates, they had refrained from all participation in the discussion, for the reason that it would have been useless to have taken part in it and that they did not wish in any way to help to give "implied validity to so flagrant an abuse of power."

The discussion of the history of the diplomacy antecedent to this war, which was treated exhaustively in this address as it had been in nearly all the speeches delivered, is not within the province of this work. It is necessary to mention particularly only one point of the protest, because it embraces in a few words all that is of importance in the war of 1812 for the constitutional history of the United States and in part also for the history of American democracy.

Those who protested against the war insisted that any war was pregnant with great danger to the United States, because of the peculiar nature of their union. The "moral bond" which united "the powerful and independent sovereignties" should not have been subjected to such a strain, so long as its new institutions were not more mature. In this instance, it was doubly foolish to fight, because the people entered upon the war a divided people, on account of important "moral and political objections."[2]

[1] Niles' Reg., II., pp. 309–315.

[2] "In addition to the many moral and prudential considerations which should deter thoughtful men from hastening into the perils of such a war, there were some peculiar to the United States, resulting from the texture of the government in no small degree experimental, composed

The ground last named was considered by the protesters as of the greatest weight. The presidential election gave these words a special emphasis. The war was the great question in the presidential campaign, and the result showed the geographical separation of parties more clearly than it had been seen for years. With the exception of Vermont, all the New England states, and New York, New Jersey, and Delaware gave their solid electoral vote for DeWitt Clinton. Maryland was divided, and Pennsylvania, with all the western and southern states, voted unanimously for Madison.

But even if the division had not been to so great an extent of a geographical kind, an element of the highest importance remained. Only the young men of the war party were ready to say that it operated as a spur rather than as a damper upon their blind war feeling. It was not reserved for Webster to be the first, after the country had, for a year and a half, tormented itself with the rashest experiments, to lay bare the truth that a party war of such dimensions could not be brought to a successful issue in a popular state, especially in a popular state of such peculiar structure.[1] Indeed, six months before the decla-

of powerful and independent sovereignties associated in relations, some of which are critical as well as novel; should not be hastily precipitated into situations calculated to put to trial the strength of the moral bond by which they are united. Of all states that of war is most likely to call into activity the passions which are hostile and dangerous to such a form of government. Time is yet important to our country to settle and mature its recent institutions. Above all, it appeared to the undersigned from signs not to be mistaken, that if we entered upon this war, we did it as a divided people; not only from a sense of the inadequacy of our means to success, but from moral and political objections of great weight and very general influence."

[1] "The truth is, sir, that party support is not the kind of support necessary to sustain the country through a long, expensive and bloody contest; and this should have been considered before the war was declared. The cause, to be successful, must be upheld by other sentiments and higher motives. It must draw to itself the sober approbation of

ration of war, it was emphatically declared by one of themselves, and a very distinguished personage, that the end for which they contended could be attained only by a really national war.[1]

That the war from the beginning bore the character of a mere party war was a fact so patent that not even the boldest advocates of the war party dared to deny it. This did not by any means prove that it might not become a national war; but the hope that such would be the case was based solely on the experience that in war the feeling of nationality as a rule silences all others. The war party had expected with so much certainty that this would be the case, that they declared the mere existence of the war made it a positive duty to abandon all further opposition, of no matter what form. The Federalists and their Democratic allies replied that if it was impolitic and unjust to begin the war, it could not be politic and just to continue it, only because it was begun. It did not follow that because they had not been able to prevent the war, they were obliged to lend their aid to magnify the evil indefinitely. It was incumbent on them, as men and citizens, to use all lawful means in their power to put an end, as soon as possible, to a course which, in their opinion, was simply criminal. The war party, on the other hand, harped on

the great mass of the people. It must enlist, not their temporary or party feelings, but their steady patriotism and their constant zeal. Unlike the old nations of Europe, there are, in this country, no dregs of population, fit only to supply the constant waste of war, and out of which an army can be raised for hire at any time, and for any purpose. Armies of any magnitude can here be nothing but the people embodied; and if the object be one for which the people will not embody there can be no armies." Deb. of Cong., V., p. 139.

[1] Macon, of North Carolina, said: "And here, sir, permit me to say that I hope this is to be no party war, but a national war. . . . Such a war, if war we shall have, can alone, in my judgment, obtain the end for which we mean to contend, without any disgrace." Ibid, IV., p. 452.

the honor of the country which was involved in the issue, and branded these views as "moral high treason."

Looked at from an absolute standpoint, much might be said in favor of both views; but it is the political philosopher and not the practical statesman who should judge such questions from an absolute standpoint. This the war party had overlooked. Webster demonstrated to them, in a masterly oration, that the given circumstances made this change of this party war into a national one materially more difficult, and that they had, besides, done, and were doing, all in their power to make it impossible. Their fundamental error was that they had treated the whole question as a legal one. True, it was necessary to make it appear that there were sufficient reasons to declare war, but that was not enough; its wisdom and expediency should also have been proven. The strength of the government was based on the united conviction of the people, and a rational government would not therefore have taken so important a step without ascertaining whether such a united conviction existed. Especially should the public opinion of those states whose interests were mainly to be protected by the war have been taken into consideration. But even all this would not have been enough. "The nature and structure of the government, the general habits and pursuits of the community, . . . the variety of important local interests," should have been kept in view. In a word, "reasons of a general nature, considerations which go back to the origin of our institutions," should have been taken into account. He had heard no justification of the war on such grounds.[1] If its advocates, he had said a few days before, could show that it was undertaken on grounds manifestly just, that it was necessary and unavoidable, and strictly an American war, it would then change its character, and grow as energetic as it was now weak

[1] Deb. of Cong., V., pp. 137, 138.

and feeble. It would then become the affair of the people and no longer remain that of a party.[1]

This "if" could never be met to the satisfaction of the Federalists, which is only another way of saying that they would never look upon the war as a national one. The year and a half which had passed since its beginning ought to have been enough to lead them to this conclusion, if that were at all possible. The probability of such an event was all the smaller, because the elements on which the war party had calculated so strongly were not without influence from the first. Even Monroe acknowledged, in September, 1812, that success as well as defeat had contributed to bring the opposition nearer to the war party. But he took the erroneous view that this influence would suffice to soon make the war a national one.[2]

This error of the war party, so pregnant with results, had a very good foundation, which was pointed out in the protest already mentioned, and by Webster. Wherever a vital national feeling exists, it will always, with the vast majority of the people, cast every other consideration into the shade, when once a war has been begun for reasons as important as

[1] Curtis, Life of Webster, I., pp. 117, 118.

[2] Monroe to Clay, Sept. 12, 1812: "From the northern army we have nothing which inspires a confident hope of any brilliant success. The disaffection in that quarter has paralyzed every effort of the government, and rendered inoperative every law of congress. I speak comparatively with what might have been expected. On the public mind, however, a salutary effect is produced even there by the events which have occurred. Misfortune and success have alike diminished the influence of foreign attachments and party animosities, and contributed to draw the people closer together. The surrender of our army excited a general grief, and the naval victory a general joy. Inveterate toryism itself was compelled in both instances to disguise its character and hide its feelings, by appearing to sympathize with those of the nation. If Great Britain does not come forth soon and propose honorable conditions, I am convinced that the war will become a national one, and will terminate in the expulsion of her force and power from the continent." Private Correspondence of H. Clay, pp. 23, 24.

in the case before us, and even when a very large portion of the people are decidedly opposed to the declaration of war, because of doubts as to the possibility of bringing it to a successful issue, or because of the injury it may be calculated to entail upon certain special interests. But a live national feeling can obviously be found only among a people who constitute a nation in the real sense of the word. The people of the United States, however, were yet far removed from being a nation in this sense, although they had among them the conditions precedent of a rapid national intergrowth, and although these conditions had become vastly more favorable since the revolutionary war. The war party had calculated on a national feeling which did not yet exist, although the war might contribute to beget it. The national feeling that existed was not even so strong that it could be credited exclusively or mainly with the approximation of the opposition to the majority, which Monroe conceded had taken place. The consciousness of duty and a recognition of the interests which had their root in the political unity of the states, had a much greater influence in producing this result.

The leaders of the opposition declared from the first, in express terms, that they would take this ground. They were loyal, but they coldly and exactly calculated what the laws made it their duty to do, and peremptorily refused to do more.[1] Even in January, 1812, during the debate on

[1] Neumann, in his "Geschichte der Vereinigten Staaten," speaks of the "lawless conduct" of Connecticut and Massachusetts (II., p. 168), of the "baseness" of the opposing Federalists (II., p. 176), and of the "long-exploded objections" of the Federalist opponents of the administration. Neumann has scarcely the most superficial knowledge of American constitutional law, and without a thorough knowledge of it, it is simply impossible to write a history of the United States. The Commentaries of Kent and Story, the Federalist, Curtis on the History of the Constitution, Whiting on the War Powers of the President, etc., and one of Luther's essays, are the only works relating to the constitution named in his three volumes, but even these the author has evidently not once

the increase of the marine, Quincy remarked, that the interests of the states should be the "polar lights" of every American statesman in the decision of every question of vital importance. This was predicated on the sovereignty of the states. The "artificial ties of parchment compact" would be found to be too weak the moment the interests of the states ceased to hold them together.[1]

really studied. He has not even made any use of the decisions of the supreme court or of the opinions of the attorneys-general. And the other numerous sources which the author has used, he has worked only very superficially. It is impossible to account on any other hypothesis for the fact that he has been able to overlook or completely to misunderstand the most essential matters in the documents which he quotes. This last is accounted for in part by the fact that he had no personal knowledge of the United States, and his idealistic republican doctrines are the thread of Ariadne by which he guides himself through the labyrinth of their history. He was not satisfied, however, with writing their history "for better or worse" but, as he says himself in the preface (III., p. IX) for "a text book for all other nations." Yet the book is not without its good points. He deserves credit especially for having, during the darkest hours of the republic, with an enthusiasm which was always honest if not critical, lauded its good and healthy parts, and preached with the deepest conviction, that without any manner of doubt the north, with its free labor and free political institutions, would win the victory over the south, based on slavery and on slavery in the form most antagonistic to morals and civilization. As a historical work, however, I consider it of so little value, that I simply take occasion to refer to it to point out some of the most flagrant errors. And here I wish to especially say that it is no place to look for information on constitutional questions.

[1] "I confess to you, Mr. Speaker, I never can look—indeed in my opinion no American statesman ought ever to look—on any question touching the vital interests of this nation, or any of its component parts, without keeping at all times in distinct view the nature of our political association and the character of the independent sovereignties which compose it. Among states the only sure and permanent bond of union is interest. And the vital interests of states, although they may be sometimes obscured, can never for a very long time be misapprehended. . . . And need I tell statesmen that when great local discontent is combined in those sections [the states] with great physical power, and with acknowledged portions of sovereignty, the ties of nature will be too strong for the artificial ties of parchment compact? Hence it results that the

The anti-Federalists had not, even in the times of the greatest excitement during the administrations of Washington and Adams, insisted more strongly on the confederate nature of the Union. Quincy not only looked upon it as an unquestionable fact that the Union was not a nation; in his opinion it was also undeniable that there was no present national feeling or national interests which could in a lasting and far-reaching struggle prevail over the separate interests of the individual states.

Webster gave more prominence to the other side of the question. Apart from general political and moral considerations, it was his conviction that the war could not and should not become a national one, because the interests of the northern and eastern states were especially injured. He also charged the reigning party with endangering the continued existence of the Union, for it could not be preserved by law alone.[1] But at the same time he assured them that the demands of the government would be yielded to, to the precise extent of constitutional liability, because the war was the law of the land.[2]

essential interests of the great component parts of our association ought to be the polar lights of all our statesmen—by them they should guide their course. . . . No political connection among free states can be lasting, or ought to be, which systematically refuses to protect the vital interests of any of the sovereignties which compose it." Deb. of Congress, IV., pp. 499, 500 ; Ann. of Cong., 2, XII., p. 208.

[1] In the Rockingham Memorial. Curtis, Life of D. Webster, I., pp. 107, 108.

[2] In a speech delivered July 4, 1812, before the Washington Benevolent Society of Portsmouth, he said: "With respect to the war in which we are now involved, the course which our principles require us to pursue cannot be doubtful. It is now the law of the land and as such we are bound to regard it. Resistance and insurrection form no part of our creed. The disciples of Washington are neither tyrants in power, nor rebels out. If we are taxed to carry on the war we shall disregard certain distinguished examples, and shall pay. If our personal services are required, we shall yield them to the precise extent of our constitutional liability." Ibid, II., p. 105. Compare also his speech of Jan. 14, 1814, in the house of representatives. Deb. of Congress, V., p. 138.

The exaggerated and insulting charges of the majority against the opposition were little calculated to move them to a change of attitude. Even in Massachusetts the administration party used its momentary supremacy in the senate, notwithstanding the undoubted feeling of a majority of the people, to issue an address which had the tone of a common libel against the leaders of the opposition.[1] They were not only branded as "enemies of republics," who had acknowledged themselves as monarchists and did not conceal their intention to attempt a revolution, but it was also declared with assurance that they had formed "a deep and deadly design against our happy Union." This was the tone assumed by the majority everywhere and not least of all in congress.[2] Unmeasured praise and blame have not become characteristics of the political life of the United States only in recent times: they are as old as the republic, and it is easy to show that democratic republics have always to suffer more from this cause than states of a different constitution.

The minority of the house of representatives of the Massachusetts legislature expressed themselves, from prudential motives, in more temperate terms in their memorial to congress, but they endeavored to confine legitimate opposition within much narrower limits. When, during Adams's presidency, the Virginia resolutions were decidedly discountenanced by Massachusetts and other states, Madison met their objections with the declaration that the legislature had only given expression to its own view, and wished to incite the other legislatures to similar expressions of opinion. At that time, even the most extreme Fed-

[1] Niles' Reg., II., pp. 308, 309.

[2] Thus, for instance, Henry Clay said: "His [Jefferson's] own beloved Monticello is not more moved by the storms that beat against its sides, than is this illustrious man by the howlings of the whole British pack, set loose from the Essex kennel!" Life and Speeches of H. Clay, I., p. 38.

eralists had not questioned that the legislature of Virginia had not trespassed its constitutional authority, if it were granted that this was all its resolutions implied. It was reserved for the Democratic representatives of Massachusetts to question the "expediency, as well as the constitutionality" of their Federalist colleagues, in "addressing congress on the subject of peace or war in their capacity of legislators."[1] The Federalist majority in the Massachusetts house of representatives proposed in their address to the people of the state precisely the same programme proposed by Webster in his speech of July 4.[2] He said that the war was "an instance of inconceivable folly and desperation," but at the same time advised the people "to discourage all attempts to obtain redress of grievances by any acts of violence or combinations to oppose the laws;" for it was the duty of every citizen "to support all constitutional laws." How far, in this case, it was the opinion of the legislature that their support should go, was pointed out with sufficient clearness. It was the duty of the citizen to defend the country against invasion without any reference to the necessity or justice of the war, and not to oppose the conscription; but, on the other hand, volunteers should resort to arms only in a defensive war. The choice of other men to fill the executive and legislative offices of the Union and the organization of a peace party were proposed as the only legitimate means of redress.

The other New England states, with the exception of Vermont, assumed the same position as Massachusetts, in which they were joined by New Jersey.[3] The two leading states of the northeast, Massachusetts and Connecticut, as well as the small state of Rhode Island, immediately gave a practical illustration to their declarations. General Dearborn demanded that the governors should call out a

[1] Niles' Register, II., p. 274.
[2] Ibid, II., pp. 417–419.
[3] See the "Declaration" of the legislature. Ibid, III., p. 179

certain quota of the state militia and muster them into the service of the United States. The governors refused to acquiesce and raised the question of constitutionality.[1] The legislatures approved their decision. In Rhode Island a council of war, called by the governor, decided that the governor alone could determine whether a case had arisen in which the constitution warranted such a demand on the part of the federal executive.[2] The supreme court of Massachusetts expressed the same opinion in answer to a question put to it by the governor.[3] The president complained in his message of Nov. 4, 1812, that under this interpretation of the constitutional provision in question, "they [the United States] are not one nation for the purpose most of all requiring it."[4] The complaint was only too well founded; but what party was it that for twelve years had industriously labored to unravel, and even to sever, the national bonds which the constitution was intended to create? By what right did the anti-Federalists think they could assume that the old proverb, that he who sows the wind shall reap the whirlwind, should not be true as applied to them? Had not Madison, ten years before, stood in the first rank of those who labored and inveighed against the further strengthening of the nation with so

[1] Niles' Register, III., pp. 24, 117, 179.

[2] Official Documents of the State of Connecticut, Aug., 1812. Niles' Reg., III., p. 180.

[3] Dwight, Hist. of the Hartford Convention, p. 256. The supreme court of the United States in the case of Martin vs. Mott. 1827, decided: "We are all of opinion that the authority to decide whether the exigency [of calling forth the militia] has arisen belongs exclusively to the president, and that his decision is conclusive upon all other persons." Wheaton's Reports, XII., p. 30; Curtis, Decisions of the Supreme Court, VII., p. 12. See also Kent, Comm., I., pp. 278, 279; Story, Comm., §§ 1210–1215. Compare also the act of congress of March 3, 1863. Statutes at Large, XII., p. 731, etc. The constitutionality of this law has been variously decided in the different states. See Paschal, Constitution of the U. S., p. 136.

[4] Amer. State Papers, VIII., p. 317. Statesman's Manual, I., p. 300.

much ardor that the original national party now dared, in the most important of all respects, to lay hands on the very roots of the national character of the state.

The course of the New England states on the militia question must have satisfied the administration that the opponents of the war had not uttered mere idle threats when they declared that, in their support of the war, they would go only to the limits of their legal liability, so long as there was no necessity of defending their own soil. The New England states soon came, indeed, to a compromise on the question; but the following elections showed that the party which offered aid only for a defensive war increased in strength. In the especially important state of New York, a coalition of the war party proper with those who assumed on the war question a national attitude, in harmony with that of the war party, elected its candidate for governor. Tompkins, however, received a majority of only 3506 votes over his opponent, Van Rennselaer, and in the house of representatives the Federalists had a majority of eight votes.[1] Delaware was represented in both houses of congress by peace members, and the opponents of the war had a majority in the legislature of Maryland.[2] In the house of representatives of the thirteenth congress, in which the number of members had been increased from 142 to 182, the Democratic majority of 70 in the twelfth congress shrunk to 46.

No change took place in the position of the minority in congress. They urged peace. They were ready to vote the means necessary to carry on a defensive war, but steadily refused to agree to the demands made by the government for men and money, because they considered that it was proposed to carry on an aggressive war. The majority

[1] Niles' Register, IV., p. 432.

[2] Ingersoll, Second War between the United States and Great Britain, II., p. 20.

did not concede this and defended their protest on the principle that attack was often the best means of defense. As an abstract truth this could not be questioned; and looked at from a military point of view, it might have been correct in this particular instance. But it was now too late to represent the conquest of Canada only as a means to the end, and still less was it politic to refrain from holding it out to the people as the most brilliant fruit of the war. To this allurement was due, in a great measure, the popularity of the contest in the west and even in the south; and there was now double need of it because the great promises of the first year had shamefully and disgracefully failed of realization. The Federalists were guilty of ridiculous exaggeration when they represented that the principal cause of the conflict was a longing to take possession of Canada. But when the wrongs inflicted by England had become so intolerable that there was just ground for a declaration of war, the hope of its acquisition silenced many considerations which otherwise might easily have decided the issue in favor of the peace party. That the love of conquest had its home now as later in the aristocratic south and in the west—from the very first the seat of American ambition—was not a mere accident. The northeast, to which the acquisition of Canada would have been of the greatest advantage, and which would have been benefited by it soonest, could not be won over to the project,[1] partly on account of the narrow view, so disastrous to its own interests, which had governed its policy in the question of the Louisiana purchase and the admission of new states into the Union.

The sectional separation of parties came to light not only as to the question of war in general, but also as to the mode

[1] On the alleged gain of Goodrich to the plans of the war party see Ingersoll, Second War between the U. S. and Great Britain, II., pp. 236, 237.

of conducting it,[1] and as to one of the principal objects

[1] This contest turned mainly on the question whether the decision of the struggle should be made on land or on the water. The south and west here gave evidence of the same short-sightedness and want of generosity which the north had shown in relation to the points mentioned in the text. The course of events quickly decided the question in favor of the policy advocated by the north. Little as was done for the fleet, it accomplished most of what the Americans had to boast of. If the south and west had surrendered their irrational prejudices in the first year of the war, its course might perhaps have been more favorable. On this condition Webster promised even the strong support of the New England states. He closed his speech of Jan. 14, 1814, with these words; "If, then, the war must be continued, go to the ocean. If you are seriously contending for maritime rights, go to the theatre where alone those rights can be defended. Thither every indication of your fortune points you. There the united wishes and exertions of the nation will go with you. Even our party divisions, acrimonious as they are, cease at the water's edge. They are lost in attachment to national character on the element where that character is made respectable. In protecting naval interests by naval means, you will arm yourselves with the whole power of national sentiment and may command the whole abundance of the national resources. In time you may enable yourselves to redress injuries in the place where they may be offered, and if need be, accompany your own flag throughout the world, with the protection of your own cannon." Deb. of Congress, V., pp. 140, 141. To the honor of Henry Clay, it must be said that he did not adopt the narrow views of the majority of his party allies. He said in January, 1812: "It appears a little extraordinary that so much unreasonable jealousy should exist against the naval establishment." Life and Speeches of H. Clay, I., p. 23. But he remained far behind the broader and really statesmanlike views of Webster. In the same speech he says: "Indeed, I should consider it as madness in the extreme in this government to attempt to provide a navy able to cope with the fleets of Great Britain." Ibid, p. 25. He contented himself with demanding a fleet sufficient for coast defense, but was of opinion that it would require ten years to procure this. For the present he stated that he was satisfied with a naval force sufficient successfully to repel the attacks of individual ships. As far back as the 23d of December, 1807, John Adams had written: "The resources of the country ought at present to be appropriated to the sea." Quincy, Life of Quincy, p. 162. See also the declarations of Ch. C. Pinckney, in 1788, in the convention of South Carolina. Elliot, Deb., IV., p. 284. What was done immediately before the war and during it for the fleet is to be found in Stat. at Large, II., pp. 699, 788, 821; III., pp. 104, 144.

sought to be attained by it. The ruinous consequences of this separation made themselves felt more and more every day; but the majority cast all considerations of political wisdom to the wind. Infinite variations were played on the old theme, that the fact of the war sufficed to make it the duty of every citizen to support it by all means in his power. The opposition answered that it was time that the majority should really place itself on the ground of facts. Now it was a fact that the Union was made up of different sections, and congress in its legislation should consider this fact, for better or worse.[1] The majority were warned that they undermined the assumption on which the Union was built in not yielding to the justice of this demand; but the warning came this time not from a New Englander, but from a member from Virginia.[2]

It was the policy of the majority to pour all the vials of their wrath upon the New England states, as if there alone the opposition was to be found. By this means the false appearance was created that the sectional division of parties was much more clearly defined than it was in reality. The so-called middle states took a medium course, as they had done on so many previous occasions. Pennsylvania, by a large majority, remained faithful to her close alliance with the south. In New Jersey, parties were so nearly equally divided, that first one and then the other had the preponderance. In New York the peace party was so powerful that it was only with great difficulty that governor Tompkins could keep it under to such an extent that the majority could count the state among the "patriotic." Delaware and Maryland could not be unconditionally claimed by any party, but at times their peace tendencies

[1] See the speech by Bleeker of New York, Deb. of Congress, IV., p. 645. Randolph shows, in a letter dated Dec. 15, 1814, how sectionalism and particularism were fed by ignorance of the situation and condition of affairs in other states. Niles' Reg., VII., p. 260.

[2] See Sheffey's speech. Deb. of Congress, IV., p. 666.

greatly preponderated; and finally there was even in Virginia a considerable minority against the administration. We need only to examine the vote in the house of representatives on some of the most important laws to be convinced of the injustice there was in casting the whole odium of the opposition on the New England states.[1] If, notwithstanding the fair estimate of the actual situation of things during this period, which all democratic writers have made, the New England states must be reproached with having soiled their name by their opposition, the reproach must, more or less extenuated it is true, be extended to a large portion of the population of the other states. It is not equitable in this case to speak only of the states, instead of the population of the states. The simple repetition of the untruth has, because of the admixture of truth it contained, been sufficient to falsify historical judgment for several decades.

The democratic press endeavored to show that the interests of the New England states had suffered least from the war, and even that they had been benefited by it; that therefore their opposition was all the more inexcusable.[2] In this assertion, too, there was a certain amount of truth, although the proofs adduced might be attacked on more than one ground.[3] In view of the urgent questions of

[1] Of the forty-two members who voted on the 14th of January, 1813, against the increase of the army, there were two from Maryland, one from Delaware, six from New York and eight from Virginia. Deb. of Congress, IV., p. 702. In the vote on the bill providing for further enlistments, of the fifty-eight who voted against it, there were two from Delaware, four from New Jersey, four from Virginia and fifteen from New York. Ibid, V., p. 147. On the 3d of March, 1814, fifty-five members voted against the authorization of a loan of $25,000,000; of these six were from Virginia and fifteen from New York. Ibid, V., p. 287.

[2] See Niles' Reg., VII., pp. 193–197.

[3] It is characteristic of the politico-economical ignorance of the time that the opinion was very prevalent among the Democrats that the loss of New England's carrying trade would be of no consequence to the rest of the Union, and might even be advantageous to it.

political expediency, which grew out of their dissatisfaction, it was a matter of complete indifference whether, and to what extent, their charges were exaggerated. The advantages which they enjoyed at the beginning of the war were not, in large part, lasting. England had at first treated them with great consideration. But when she was satisfied that there was little prospect of their rising up against the federal government, or of her coming to a separate understanding with them, their ports also were subjected to a strict blockade.[1] Dissension, in consequence of this, and of the increasing losses of human life, and of the other misfortunes always attendant upon war, as well as of the want of success of the war in general, steadily increased. The legislature of Massachusetts voted on the 12th of June, 1813, another memorial to congress, couched in terms much more decided and excited than that of the preceding year.[2] The declaration of war was called "premature," and its prosecution after the publication of the English orders in council "improper, impolitic, and unjust." All the other grievances, both earlier and later,

[1] The Democratic press of the time, and many later historians of the same political complexion, have adduced a correspondence of the Boston *Daily Advertiser* as one of the most damaging pieces of evidence to prove the treasonable plans which were devised in the New England states. The truth is, however, that the correspondence has no significance further than as an illustration of the ingenuousness with which the lack of national feeling and the view of the confederate nature of the Union found occasional expression. The correspondent recommended that the New England states should conclude a separate treaty with England. He did not in this contemplate an unconstitutional measure, for he said that the permission of congress to this end should first be obtained. The constitution only forbade the states to make treaties with foreign powers without the consent of congress. The Netherlands and Germany were cited to prove that such separate treaties and wars were not at variance with the idea of a federated state. But if congress should "unreasonably refuse" this just, reasonable, and constitutional effort, it would "then remain for the wise and prudent to decide" what should be done. Niles' Reg., V., pp. 199, 200.

[2] Niles' Reg., IV., pp. 297–301.

were also brought forward again. A solemn protest was raised against the creation of new states out of the territory which lay without the limits of the original union. The address concluded with an urgent prayer that every effort should be made to bring about a just and honorable peace. These and similar demonstrations in the other New England states met with as little success as the former ones. Instead of endeavoring to effect a reconciliation, the irritation was increased by insulting insinuations; instead of thinking of removing well-founded grievances.[1] the thorn was pressed still deeper into their sides by exaggerated mistrust and open injustice. The minority of the Massachusetts legislature issued a protest against the memorial of the majority, in which they declared that only those who were "altogether and exclusively British" could read this "humiliating remonstrance" without the deepest indignation.[2] The administration made the New England states keenly feel that, on account of their behavior, they deserved only the treatment accorded to step-children. Viewed from a purely military standpoint, the administration might be justified in employing all its strength to carry out its plan for the conquest of Canada, and leaving the defense of the coast to the militia of the Atlantic states. But such a mode of warfare is always dangerous in a state of loose structure, and hazardous when the parts most exposed share in the war only with reluctance. It

[1] Story, himself a Republican, but not of the Jefferson school, asserted that Jefferson had extended this mistrust even to the Republicans of New England. He writes: "One thing, however, I did learn . . . while I was a member of congress: and that was that New England was expected, so far as the Republicans were concerned, to do everything and to have nothing. They were to obey, but not to be trusted. This, in my humble judgment, was the steady policy of Mr. Jefferson at all times. We were to be kept divided, and thus used to neutralize each other. So it will always be unless we learn wisdom for ourselves and our own interests." Life and Letters of J. Story, I., p. 187.

[2] Niles' Reg., IV., p. 301.

can be politically justified only on the ground that power, when compact and centralized, deals blows of the greatest weight. The Madisonian mode of warfare was characterized by bold plans, to be carried out at a distance and slowly and weakly prosecuted. But even apart from this, the course of the administration can not be justified. It not only left New England to itself, but refused Massachusetts the arms she needed for her protection, and to which she was entitled. This was not only a contemptible piece of persecution, but it showed also that, under certain circumstances, the administration, as well as the New England states, was wanting in the national feeling. But it was wanting still more in political judgment. The rich experience which had already been gained was of no avail to it. It stuck fast in the swamp into which the head master of the Democratic party had guided the commerce and policy of the country. On the 9th of December, 1813, Madison, in a confidential message to congress, recommended a new embargo and greater restrictions on importation.[1] As ground for this he adduced the extensive smuggling trade carried on with the enemy, the introduction of British products and manufactured articles, and other illegal importations.

Mason of New Hampshire exposed the folly and the danger of the measure in a short, clear speech in the senate.[2] That body was compelled to hear again that it danced in the dark to the president's music. If, as was asserted in the message, the enemy obtained provisions from the United States, the president must have evidence of that fact in his possession, and if he had such proofs it was his duty to lay them before congress. And, besides, what sense was there in prohibiting all exportation in order that the enemy might be prevented from obtaining provisions?

[1] Amer. State Papers, VIII., p. 503; Statesman's Manual, I., p. 317.
[2] Deb. of Congress, V., p. 79.

Mason had not expected to make any impression; he said that he desired only to register his "solemn protest." The opposition had grown used to have their remonstrances looked upon only as an exercise in declamation. The embargo was resolved on by both houses in secret session, and a bill passed which imposed the most unbearable restrictions on commerce on inland waters.[1] The administration and the majority acted as if they were testing how far they might go with impunity, in imposing on the patience of the commercial states. They did not accomplish what they had intended; but they were fully enlightened as to the feeling of the New England states.

Numerous petitions praying for relief from a state of things which grew worse daily poured in upon the Massachusetts legislature. On the 18th of February,[2] the joint committee of the two houses reported on them.[3] The committee, in accord with the petitioners, declared the embargo unconstitutional: "A power to regulate commerce is abused when employed to destroy it; and a manifest and voluntary abuse of power sanctions the spirit of resistance, as much as a direct and palpable usurpation. The sovereignty reserved to the states was reserved to protect the citizens from acts of violence by the United States, as well as for purpose of domestic regulation. We spurn the idea that the free, sovereign and independent state of Massachusetts is reduced to a mere municipal corporation, without power to protect its people and defend them from oppression, from whatever quarter it comes. When the national compact is violated, and the citizens of the state are oppressed by cruel and unauthorized law, this legislature is bound to interpose its power and wrest from the oppressor his victim."

Thus the point of the sword was turned against those

[1] Stat. at Large, III., pp. 88–93.

[2] Hildreth, Hist. of the U. S., VI., p. 470, erroneously gives Feb. 16 as the date.

[3] Niles' Reg., VI., pp. 4–8.

who had forged it. The "bound to interpose" is a verbatim transcript from the Virginia resolutions, and the Massachusetts legislature was well aware of the fact. The report went on to say that this was "the spirit of our Union," and that it had been so declared by the very man who now bade defiance to all the principles of his earlier political life. It asserted that the question was not one of might or right, but of time and expediency.[1]

The "sage of Monticello" could not remember exactly where the last significant words were first used. The whole report was in fact but a second edition of the Virginia and Kentucky resolutions. Political parties never more completely changed places. The originators of the disintegrating doctrine cried out now, with one voice, Treason! and the Federalists who at its first appearance had branded it as treasonable, now saw in it "the spirit of the Union;" but both parties claimed in 1798 and 1799, as in 1814, that they and they alone stood on the platform of the constitution!

The report went a step, and not an unimportant one, farther than the Virginia and Kentucky resolutions. The petitioners, among many measures recommended for the removal of all grounds of complaint, introduced a resolution providing that a convention of the commercial states should be called to propose the necessary amendments to the constitution and to labor for their adoption. The report stated that such a course was perfectly warranted and cited Madison as a witness. Only on various grounds of expediency was the advice given to leave the decision whether this course should be adopted to the next legislature.

[1] Even in congress itself the right of resistance was now claimed. Webster wrote, Feb. 5, 1814, to his brother: "I do not know how it happened, but one thing led to another, till Mr. King came out in plump terms on the right of remonstrance and of resistance. He said it was a question of mere prudence how far any state would bear the present state of things, etc., etc." Private Correspondence of Daniel Webster, I., p. 241.

The "Jacobins," as, by a strange perversion of the language employed during the last decade of the preceding century, the Federalists were now called, were content with mere oratory. That this consoling conviction was won, was the only fruit which the new experiment with embargo policy brought to the administration. Its situation, however, was by no means an enviable one. Its credit was not the best, and it became continually harder for it to obtain the necessary troops. There could be no question of an exhaustion of the country in either respect. Besides, this was the last ground which the war party would have conceded. But neither would they grant that the war did not enjoy the popularity which they had claimed for it from the first. The harder it became to carry it on, the more firmly was it asserted that nearly the whole people supported it with enthusiasm, and that only the barren quarrels of a few malcontents created the semblance of a powerful opposition; and yet the opposition was blamed for every failure. Webster strikingly demonstrated the contradiction in this mode of reasoning, and between it and the actual demands which they saw themselves compelled to make.[1]

[1] "Gentlemen, sir, fall into strange inconsistencies on this subject. They tell us that the war is popular; that the invasion of Canada is popular; that it would have succeeded before this time had it not been for the force of opposition in this country. Sir, what gives force to opposition in this country? Certainly nothing but the popularity of the cause of opposition, and the members who espouse it. Upon this argument, then, in what an unprecedented condition are the people of these states? We have on our hands a most popular war; we have also a most popular opposition to that war. We cannot push the measure, the opposition is so popular. We cannot retract it, the measure itself is so popular. We can neither go forward nor backward. We are at the very centre of gravity—the point of perpetual rest. . . . Look to the bill before you; does not that speak a language exceeding everything I have said? You last year gave a bounty of sixteen dollars, and now propose to give a bounty of one hundred and twenty-four dollars, and you say you have no hope of obtaining men at a lower rate. This is sufficient to convince

The message which the president sent to congress on the 20th of September, 1814, was also written in the same peculiar double tone. Madison assured the country that the direct and indirect taxes had been paid with the utmost promptness and alacrity, and that the citizens had rushed with enthusiasm to the scenes where danger and duty called them.[1] The enemy, he said, had little cause to contemplate his last feats of arms with pride. At the same time, however, he acknowledged that the situation of the country made the greatest efforts necessary. The secretary of war gave a fuller explanation of what was to be understood by the vague innuendoes which the president had made in his message. After the confidence with which it was represented that Canada was the easy and certain prize of the war, it was strange now to hear that the United States were fighting for their "independence" and even for their life.[2] The defense of the coast and the further prosecution of the plan in relation to Canada demanded, according to Monroe, that the regular army should be increased to one hundred thousand men. How impossible he considered it to obtain so great a force by the enlistment of volunteers is evident from the plan which he recommended to congress.[3] The whole free male population from eighteen to forty-five years of age was to be divided into classes of one hundred, and each class was to be required to furnish a definite number of recruits. If any class failed to meet the demands made upon it, the recruits were to be drawn by lot. The bounty hitherto paid by the United States was to be furnished by each class to its own

me, it will be sufficient to convince the enemy and the whole world, yourselves only excepted, what progress your Canada war is making in the affections of the people." Deb. of Congress, V., p. 139.

[1] Amer. State Papers, VIII., p. 537.

[2] Dwight, History of the Hartford Convention, p. 313. The documents bearing on the question are also to be found in Niles' Reg., VII., pp. 137–141.

[3] Dwight, pp. 318-322.

recruits. If not paid within a definite time, it was to be assessed and levied on all the property of the members of the class. A similar classification of the sea-faring population was proposed to procure recruits for the navy, but the demands made on the services of the latter were much greater than those made on the former.[1] At the same time that the secretary of war submitted this plan to congress, a bill was introduced into the senate providing among other things for the conscription of minors without the written consent of their parents, guardians or tutors.

All these projected measures excited dissatisfaction and consternation in many parts of the country. Naturally the discontent was again greatest in the New England states. The legislature of Massachusetts once more took up the idea, from the immediate carrying out of which the report of the committee, February 18, had dissuaded it. The prospect of the co-operation of the other New England states seemed good. The legislature of Rhode Island had in its previous session authorized the governor to enter into communication with the governors of the other states to bring about a co-operation to this end.[2]

The programme recommended in the report made by Otis in the Massachusetts house of representatives was cautious and vague.[3] The remaining New England states were to be requested to nominate delegates to a convention to propose such measures in relation to the grievances and other matters affecting them all as should seem to them appropriate,[4] and if they considered it desirable, to adopt measures to have a convention of all the states called for the purpose of revising the constitution.

[1] Dwight, p. 333.

[2] Niles' Reg., VII., p. 181.

[3] Oct. 8, 1814. Niles' Reg., VII., pp. 149-152.

[4] Otis had already proposed the holding of such a convention at Hartford in Dec., 1808. The claim to the paternity of the thought seems to belong to him. See his letter of Dec. 15, 1808, to Quincy. Life of Quincy, p. 165.

These resolutions were preceded by others which afford a deeper insight into the spirit which dictated the calling of the convention. Governor Strong had already informed the secretary of war that he had considered it necessary, in the interest of the state, not to place the militia, who had been called out to defend the coast, under the command of an officer of the federal army. At the same time he inquired whether the general government would be willing to make good the expenses which had been incurred by the state in the adoption of measures necessary to its protection.[1] Monroe answered that this could not be when the state acted of its own accord, and maintained itself the command of the militia who had hitherto been called out. Strong laid the correspondence before the legislature, which approved his course. It resolved, moreover, in accordance with the proposals made in the report above named, to organize an army of not more than ten thousand men for the defense of the state, by enlistments for one year, or for the war, who should remain under the command of the governor. The governor was, besides, authorized to borrow, from time to time, a sum of not more than a million of dollars.

It was not necessary to put the worst of interpretations on these resolutions to consider them of a very serious nature. If Madison had rightly claimed that the national character of the Union was destroyed in that which was most essential to it, in case the governors had the right to decide when the president was authorized to call the militia into the service of the Union, it might be said with much more truth that a still more severe attack would be made on the national character of the Union if troops might be conscripted by the states and kept in their exclusive service. True the constitution only provided: "No

[1] Niles' Reg., VII., p. 143.

state shall, without the consent of congress, keep troops . . . . in time of peace."[1] At the very beginning of hostilities Connecticut, too, had made known her belief that this right belonged to the states in time of war.[2] The wording of the clause seems to fully justify this interpretation, and if the question should ever be brought before the supreme court of the United States[3] this view of the case will probably be sustained. But it should not be inferred from the constitutionality of the power that its exercise might not, under certain circumstances, be dangerous to the internal peace of the Union. Much less does its constitutionality show that Connecticut and Massachusetts, by exerting it in this particular case, did not manifest a significant increase of the particularistic spirit.

At the time the possible consequences of this resolve of the legislature of Massachusetts were not overlooked. Greater attention was directed, however, to the invitation to the Hartford convention, since Massachusetts, if she were left to stand alone, could not, in the gloomiest view of the case, be looked upon as really dangerous.

In a time of calm judgment the reception given the invitation would have necessarily quieted the exaggerated fears which part of the Republicans cherished. In Vermont the committee to which the request had been referred for consideration reported unanimously in favor of declining it. Yet the majority of the committee were Federalists. The house of representatives unanimously adopted

[1] Art. I., Sec. 10, § 3.

[2] Niles' Reg., V., p. 199.

[3] As far as I know, this has not yet happened. In Luther vs. Borden, the supreme court declined to discuss in detail the powers belonging to the states in this respect. It simply decided that "the government of a state by its legislature has the power to protect itself from destruction by armed rebellion by declaring martial law." Howard, Rep., VII., pp. 33, 45; Curtis, XVII., pp. 2, 13. Compare Story, Comm., § § 1401–1409.

the report.[1] No delegates were named from New Hampshire, because the legislature was not in session, and in the council, which had to authorize its convocation, the Democrats had the majority. Rhode Island[2] and Connecticut[3] accepted the invitation. Yet both states, like Massachusetts, denied their delegates all powers except that of making proposals, and especially charged them that their proposals must be in harmony with the duties owed to the Union.

The ultra-Democrats saw in these declarations a bold political trick, designed to win the support of the wavering elements which would have declared decidedly against the Federalists, if the latter had made known their true aim—the destruction of the Union. Only party passion could so greatly misjudge the true state of the case. There were certainly only a few Federalists—if there were any at all—who would have unconditionally preferred a league of the New England states to the relations that then existed. If it is to be inferred from single utterances of the most extreme Federalist journals[4] that this idea was widespread, yet this would not prove the existence of a plan of separation, for there is a great difference between a wish and a belief in the possibility of its realization. Moreover, the possibility of executing such a plan was evidently still less now than in 1804. Taken all in all, the war had not weakened, but strengthened, the bands of the Union. This was, in fact, its best result. Although it gave the New England states more reason for complaint, they would have been much more ready to receive such a project in 1808, when the embargo paralyzed their trade, than they were now. Among the masses of a vigorous people, there always lives a strong feeling of honor, and in democracies

[1] Niles' Reg., VII., p. 167.
[2] Ibid, VII., p. 181; in the house of representatives by 39 to 23 votes.
[3] Ibid, VII., p. 158; in the house of representatives by 153 to 36 votes.
[4] Compare Randall, Life of Jeff., II., pp. 412, 414.

this feeling is even pitched too high, as far as the position of the state toward foreign powers which maintain a hostile attitude toward it is concerned. The great fault of the Federalist leaders lay in this, that in their coolly-reckoned policy of self-interest they did not estimate this factor high enough. But the experience already acquired had not been without effect upon them. They were therefore able to persuade the majority of the people of the New England states, by appealing to their interests and their prejudices, to give the most sluggish possible support to the administration, as long as they were not too hard pressed themselves. But they would have had to have been not only far worse patriots, but also far worse politicians, than they were, if they had ventured to dream that they could bring the states, during the war, to open revolt, either by separation from the Union or by the conclusion of a separate peace. The cowardice of such an action would alone have sufficed to ensure the angry rejection of every such proposal.

Aside from these general grounds, the instant in which the convention was called together and met was especially unfavorable for such suggestions. The victory at Plattsburg, the successes of Chauncey and Brown, the patriotic conduct of Governor Tompkins of New York and Jackson's energetic action in the south had made an impression which could not be effaced by the abandonment and blowing-up of Fort Erie, the blockading of Chauncey's squadron and the wretched condition of the finances. Moreover, the peace negotiations at Ghent were in progress, and as long as they were not broken off, there was no need of despair, even if the reports were not of a favorable tenor. But with the conclusion of peace, the main grievances of the New England states ceased to exist of themselves. All these things co-operated to prevent, even in the most radical circles, any enthusiasm for the convention project. Even in Massachusetts it had a surprisingly lukewarm re-

ception. This could not be misinterpreted by the originators of the plan, and could have been just as little disregarded, even if they had thrown all other reasons to the wind. Nothing had happened which could have nerved them to the point of suddenly cutting themselves off from any way of retreat. All the reasons drawn from the inner and outer facts of the case led much more to the conclusion that the best course was to really entertain no design except the one that had been stated. Awaiting the further course of events, men wished to try to unite upon a common programme and—whatever might be decided upon—make a stronger impression upon the dominant party by harmonious action. The method and way in which the convention went to work and the result which it brought about, are the practical confirmation of this view of the case.

Dec. 15, 1814, twenty-six delegates[1] met together at Hartford and began their deliberations with closed doors. If, as the Democrats wished to have it thought, a conspiracy was being worked up which aimed at the separation of the New England states from the Union, the sentence of death had already been passed upon the affair. A conspiracy which aims at the overthrow of a government is a chimera in the United States. And if the conspirators meet on a publicly appointed day, but exclude the public from their deliberations over the method of executing their project, the conspiracy becomes a complete absurdity. In this country thorough political changes can be effected only by the direct and energetic participation of the people, and the only way to make sure of this is to carry on a public and long-continued agitation. As far as the Democrats feared in good faith a dissolution of the Union on account of the resolutions to be adopted in Hartford, they

[1] Three of them were irregular, two from New Hampshire and one from Vermont, who had been chosen by local conventions.

not only underestimated the attachment of the Federalists to the Union, but failed to appreciate how thoroughly the people were really pervaded by the democratic spirit.

The Democrats pleased themselves then and thereafter by roundly denying that they had nourished any fears whatever. Jefferson wrote, Feb. 15, 1815, to Lafayette: "But they [the British ministers] have hoped more in their [!] Hartford convention. . . The cement of this Union is in the heart-blood of every American. I do not believe that there is on earth a government established on so immovable a basis. . . They [the members of the convention] have not been able to make themselves even a subject of conversation, either of public or private societies. A silent contempt has been the sole notice they excite."[1] It is true that Jefferson had never feared that the Union would be brought to an end by the convention. But before Jackson's victory at New Orleans and before the receipt of the news of the signing of the treaty of Ghent, he would not have used such language. It corresponded with his character to blow a great blast of triumph, now that the convention, whatever significance it might have had for the moment, stood before the world as a wretched farce. It is, indeed, not difficult to obtain from his writings the proof that he had by no means such an unconditional trust in that "cement." Yet, whatever he might think, the asser-

[1] Jefferson, Works, VI., pp. 425, 426. The passage left out in the text may show with what shallowness Jefferson judged the case: "Their [the English ministry's] fears of republican France being now done away, they are directed to republican America, and they are playing the same game for disorganization here which they played in your country. The Marats, the Dantons and Robespierres of Massachusetts, are in the same pay, under the same orders, and making the same efforts to anarchize us that their prototypes in France did there. I do not say that all who met in Hartford were under the same motives of money. Some of them are Outs and wish to be Ins; some the mere dupes of the agitators or of their own party passions, while the Maratists alone are in the real secret."

tion that the convention had not even become a subject of conversation, misrepresented the facts in a foolish way. As early as the spring of 1814, the position of the New England states excited serious apprehension even among the ambassadors to Europe, although the latter looked at things more clearly for not being exposed to the immediate influence of the daily squabbles and exaggerated descriptions of the press.[1] As soon, then, as the three states which were represented in the convention took a position which must lead to a new phase of the struggle, the Democratic party began to hurl its anathemas against the "Jacobins" with threefold zeal. At the same time, it lavished loud praise upon the noble community which (it said) was about to thrust the traitors into the abyss of eternal shame and political oblivion. From an easily intelligible policy, exaggeration was resorted to in both directions. If the student disregards these exaggerations, which pretty nearly balance each other, he still finds traces of more anxiety than was reasonable. This was even more true of the administration than of the press. The constitution did not give the president the power to hinder the meeting of the convention. There was no cause for this, inasmuch as the delegates were only empowered by their respective legislatures to make proposals. It was also not easy to see how the twenty-six men could be able to surprise the government by suddenly lighting the torch of insurrection. Yet it was considered necessary to notify Col. Jessup to watch them carefully. The letters exchanged between Jessup and the president have unfortunately been in great part lost, but enough is known of them to prove that Madison took the matter very seriously. From Dec. 15, 1814, to Jan. 23, 1815, Jessup sent a daily report to the presi-

[1] Thus, for instance, Gallatin writes, April 22, 1814: "Above all, our own divisions and the hostile attitude of the eastern states give room to apprehend that a continuance of the war might prove vitally fatal to the United States." Priv. Cor. of H. Clay, I., p. 80.

dent.[1] The letters were mostly sent in a private way, and sometimes the colonel himself brought them to New York in order that they might not be intercepted. This precaution was superfluous, indeed, inasmuch as the news to be sent was by no means of such an important nature. Jessup wrote from New Haven, on the day the convention met: "I am surprised how little interest [among the Federalists] the meeting excites."[2] Writing later from Hartford, he had only to announce that so far as he could learn, the convention kept strictly within the limits of the law.

If he nevertheless kept on sending his daily reports for fourteen days after the adjournment of the convention and spoke in them of "plans to destroy the government," "attempts to gain possession of the public stores," etc., we may well infer that Madison did not share Jefferson's pretended view.

People in Washington and in the whole country were surprised, and, to speak truth, not merely pleasantly surprised, that the report of the convention, in which the results of its secret deliberations were summed up, was not a more revolutionary document. As affairs now began to shape themselves, the ruling party would have preferred a somewhat more decided manifesto in order to master the "conspiracy" with greater eclat. It was not contented with being able to punish it only by scorn and "contempt."

After a thorough recapitulation of the complaints so often discussed, the report recommends to the legislatures of the represented states certain measures for the removal of the most pressing hardships, suggests a series of amendments to the federal constitution, provides for the calling of a new convention in certain eventualities, and finally authorizes some of the delegates to again convoke the present convention.[3] The report starts on the assumption

[1] Ingersoll, Second War between the U. S. and Great Britain, II., p. 238.

[2] Ingersoll, Second War between the U. S. and Great Britain, II., p. 225.

[3] The whole report is given in Niles' Reg., VII., pp. 305–313 and in Dwight's Hist. of the Hart. Con., pp. 352-379. Niles' Reg., VII., pp. 328-

that a "summary" removal of the evils complained of would be possible only by "direct and open resistance," since they had become a "system." The view had already struck root, that the final reasons for this were to be found in "intrinsic and incurable defects in the constitution." The delegates, however, did not consider this as yet sufficiently proved, but confessed their conviction that permanent help could be procured only by various amendments to the constitution. In their opinion, then, these formed the most important part of the report. Their substance was, in brief, as follows: Representation in the house should henceforth be based upon the free population alone; the president must not be eligible for re-election; state offices should be entrusted only to native-born citizens; embargoes should be limited to sixty days; and a vote of two-thirds of each house should be necessary for a prohibition of commercial intercourse, the admission of new states into the Union, the authorization of hostilities (except in case of invasion) and a declaration of war.

It was not meant by the substitution of these constitutional changes for summary relief by direct and open resistance, that until their adoption or rejection the critical condition of affairs which had been brought about by the ignorance and the unconstitutional encroachments of the government should be quietly borne. The convention recommended the most energetic opposition to the following measures, already executed or projected by the federal authorities: Calling out the militia by the president without the co-operation of the state governments; the transfer of the command of the militia to officers of the regular army; the classification of the militia proposed by Monroe; the recruiting of the regular army "by a for-

332, gives also the statistical lists contained in the report, and Dwight, pp. 383-398, prints the whole journal of the convention. The latter, however, is quite worthless, since it records only the meetings, adjournments, etc.

cible draft or conscription"; and the enlistment of minors without the consent of their parents or guardians. Finally, the federal government should act in such a way that the states concerned "may, separately or in concert, be empowered to assume upon themselves the defense of their territory against the enemy." To this end, a part of the federal taxes should flow into the treasuries of the states. This resolution then recommended the legislatures to reciprocally pledge themselves to help each other with a part of their militia, or volunteer regiments raised especially for this purpose, or their regular troops, in order to repel invasion.

In these last-mentioned resolutions the absurd notion of a separate league reached its highest point. Further practical results were not to be attributed to the little league of three states in opposition to the federal government. The dissolution of the Union was of course thought about, but only as perhaps desirable in the future. If this conviction was arrived at, then the separation "should, if possible, be the work of peaceable times and deliberate consent. . . . But a severance of the Union by one or more states against the will of the rest, and especially in time of war, can be justified only by absolute necessity." These "objections against precipitate measures tending to disunite the states . . . must, it is believed, be deemed conclusive."

The form of these sentences was so skillfully selected that it cannot be said with certainty whether the convention deduced from the nature of the Union a positive right in the individual states to withdraw from the Union, or whether it claimed only a moral justification for revolution. It was prudent enough in the declaration of its position on the constitutional question not to venture beyond vague, double-meaning expressions, except so far as it could appeal to its opponents. But it went just far enough to repeat almost verbatim the declaration of

faith laid down in the Kentucky resolutions of 1798. If the members of the convention, and those in sympathy with them, were "Maratists," they could claim that they had become so in the school of Madison and Jefferson. They had learned from Madison that a state had not only the right but the duty to "interpose its authority" as a shield between its citizens and the federal powers; and Jefferson had taught them that the fundamental principle of the autocratic right of deciding in strifes between parties without a common umpire applied to the relation of the states to the Union.[1]

The report was adopted by the legislatures of Massachusetts and Connecticut. Both these states thus formally declared their acceptance of the constitutional theories maintained in it as their own. American historians have laid only little weight upon this. They have almost wholly limited themselves to giving the proof or repelling the assertion that the originators and the members of the convention had plans which were inimical to their fatherland, or thoroughly treasonable. They have pushed the sentimental and moral side of the question so far into the foreground that they have thus lost the proper point of view whence its political significance is especially to be sought.

[1] The passage bearing on this point in the report of the convention reads: "It does not, however, consist with the respect and forbearance due from a confederate state towards the general government to fly to open resistance upon every infraction of the constitution. The mode and the energy of the opposition should always conform to the nature of the violation, the intention of its authors, the extent of the injury inflicted, the determination manifested to persist in it, and the danger of delay. But in cases of deliberate, dangerous, and palpable infractions of the constitution, affecting the sovereignty of a state and the liberties of the people, it is not only the right but the duty of such a state to interpose its authority for their protection in the manner best calculated to secure that end. When emergencies occur which are either beyond the reach of the judicial tribunals, or too pressing to admit of the delay incident to their forms, states which have no common umpire must be their own judges and execute their own decisions."

The convention and its resolutions are of weight only so far as they were not simply the product of a few scattered "Catalinarian existences," but gave expression to the beliefs and ideas living in an important fraction of the people, or in the whole people. If the convention had been, as historians of Democratic tendencies make it out to be, a quite exceptional bit of infamy, it would have been simply meaningless. If the Hartford convention had not been the culmination of the inner struggle from 1801 to 1815, it would be mentioned, like the proposal made almost half a century later by Fernando Wood, that the city of New York should cut loose from the Union and constitute itself an independent state, as an entertaining historic anecdote.

Hate of England and admiration of France did not allow the domineering south to attribute an equal share of the guilt of infringing neutral rights to each of the belligerant powers. Ignorance of the laws which govern industrial life drove it into a policy of defense which was practically a policy of reckless attack upon the commercial interests of its own country. Long-cherished prejudices against the commercial interests and the peculiarly commercial states and a misjudgment of the intimate connection of these with the other economic interests of the whole country, made it stray ever deeper into these unfortunate politics, until party policy made return impossible. Wholly unprepared for war, the party had to adopt the war policy which its few young and ambitious leaders dictated to it. The declared aim of the war was the vindication of the rights, the infringement of which was especially injurious to the interests of the commercial states. But the latter persuaded themselves that the dominant party had tried, under a false mask, to injure the commercial interests from the beginning. They expected only an aggravation of the evils from the war with England and condemned the way of conducting the war as the crowning

of a reprehensible policy, directed by sectional spirit. The stronger this conviction became, the more decided was their reaction. Thus they themselves constantly gave the struggle a more marked sectional character. They fought the fight not as a national party, but as an isolated geographical section, the well-being of which depended upon commerce and the opposition of which was therefore a struggle against ruin, because the rest of the Union systematically, and perhaps, indeed, on principle, made war upon this interest. On this account they did not limit themselves to making representations and presenting protests as states, but they tried to form a formal league with each other which would have made them a union within the Union. And all these steps were not justified by the iron law of necessity, but were put on the ground of a positive constitutional right. The threat of revolution was not made, but acting on the principle of the sovereignty of the states, an ultimatum was reserved in the utterances of the founders of the opposition party and of the originators of its confession of faith.

In these last sentences I have condensed the true meaning of the strife which reached its culmination in the Hartford convention and came to a sudden end by the conclusion of peace with England. The convention consisted of delegates from three state legislatures and the state legislatures represented not only legally, but actually, the majority of the population of the states, for the latter had had repeated opportunities to choose men of other opinions. And a very strong minority in several other states entertained the same or similar views. It is therefore laughable folly to consider the convention as a gathering of brainsick conspirators, although it must be admitted that the leaders of the party formed its radical wing. But the programme of the convention was always a party programme, and this party programme adopted, on the fundamental constitutional question, the position first chosen by the

radical wing of the opposite party. Ultra-Federalists and ultra-Republicans met on a principle of constitutional law, the logical result of which was the dependence of the existence of the Union upon the free will of every single state. If the practical application of this principle in a way which would have seriously endangered the existence of the Union was attempted, at the moment, in neither of the two cases, this was only of secondary importance. The one or the other party could sooner or later hold that the time had come for such an attempt, and neither the one nor the other could oppose the attempt on the ground of positive right, without putting itself into contradiction with its own past.

CHAPTER VII.

History of the Slavery Question to 1787. The Compromises of the Constitution on Slavery.

The news that the treaty of peace had been signed at Ghent was received with loud jubilation. Jay had been denounced as a British hireling and a traitor, while the contents of the treaty negotiated by him were still kept secret. The same party now boasted of a magnificent triumph, before it knew the stipulations of the peace concluded by its ambassadors. This over-hasty joy was the best proof in what straits the administration found itself, and how weary of war the whole nation was.

The extraordinary capacity of political parties to forget at the demand of the moment, stood the Democrats in good stead. If the declaration of war had been delayed only a short time, the United States would have heard that the orders in council already mentioned had been recalled. From the beginning of the war, the so-called pressing of alleged British subjects found on American ships was the only one of the officially stated causes of the declaration of war which remained in existence.[1] The report made to the house of representatives, June 3, 1812, by the committee on foreign affairs, declared that "it is impossible for the United States to consider themselves an independent nation" as long as this mischievous practice was not put an end to.[2] In the course of hostilities, it was reiterated by the executive as well as sharply declared by congress, that a prime object of the war was to force England

[1] Am. State Papers, VIII., p. 125.
[2] Ibid, VIII., p. 159.

to give up this pretended right.[1] Even the conclusion of a truce was made dependent upon England's abandonment of this practice.[2] Monroe, in his instructions of April 13, 1813, to the plenipotentiaries who were charged with the negotiations for peace, declared that "a submission to it by the United States would be the abandonment, in favor of Great Britain, of all claim to neutral rights and of all other rights on the ocean."[3] But on June 27, 1814, he communicated to the peace commissioners, by order of the president, the advice that they should conclude the treaty without any stipulation on this point, if it should appear to be an impassable obstacle.[4] It so happened that in the treaty of peace not a word was said on either this point, or the whole question of neutral rights.[5]

Under these circumstances it needed a bold front to begin the message, in which the president announced to congress the conclusion of peace, with the words: "I congratulate you and our constituents upon an event which is highly honorable to the nation, and terminates with peculiar felicity a campaign signalized by the most brilliant successes."[6] The Federalists naturally did not fail to point out with biting mockery the contrast between the facts and this presumptuous assertion. But the people by no means always see events in a new light on account of their results. The nation wished peace if it did not have to be bought in a precisely shameful way, and had feared for some time lest it should perhaps cost some unbearable

[1] Am. State Papers, VIII., pp. 333, 425, 560.

[2] Ibid, VIII., pp. 318, 336, 345.

[3] Ibid, VIII., p. 567. There are two differently paged editions of the State Papers. In the other edition, this reference would be: Amer. State Papers, Foreign Relations, III., p. 695.

[4] Ibid, VIII., pp. 593-4.

[5] Statutes at Large, III., pp. 218-223.

[6] American State Papers, VIII., p. 653. Statesman's Manual, I., p. 325. In the latter the message is erroneously dated on the 20th instead of the 18th of February.

sacrifice. It was not difficult, then, for it to persuade itself, with the help of the national pride, that the restoration of the *status ante* was "highly honorable." The picture, seen "through the smoke of Jackson's victory," was fair enough to look upon. It happened, moreover, that the state of things in Europe promised a long peace, and so there was practically little ground for the fear that England would soon again have occasion to attempt a violation of neutral rights or the impressment of sailors. And her inclination to risk such an attempt must decrease every day with the powerful growth of the United States in population as well as in wealth.

Despite the mockery and the blame, thoroughly justified in certain respects, which the Federalists lavished upon the Democratic party, the latter came out of the war strengthened, while all was now over with the Federalists. Holmes had warned them that they were driving on to the "shipwreck of their party."[1] Now that the sufferings of the war and of the whole "policy of restriction" were over and, thanks to the great prosperity of the country, were quickly forgotten, men only remembered how tardily the Federalists had discharged their duty to the Union in its hour of need. The latter could not free themselves from the suspicion that they had been willing to wholly withdraw their aid from the country, or even to turn against it, for a convincing proof against such a suspicion can not be brought forward when a man will not be convinced. The positive assertions of their opponents left a shadow upon them, and the mass of the party was well contented to let itself be considered as innocently led astray. All the blame lavished upon the Federalists on account of their conduct during the war was ever more and more summed up in the one expression "Hartford convention," and the inexpiable guilt which was conveyed by these words rested

[1] See the whole speech in Niles' Reg., VI., Sup., pp.180–184.

only on the leaders. These apt tactics isolated the leaders more and more, and soon made the number of their followers dwindle into a little crowd, not worth noticing.[1]

The Democrats remained masters of the field, practically without a contest, and until circumstances developed new questions which could serve as a basis for party action their supremacy could no longer be endangered. The European commotions which had given rise to dangerous crises in American politics since Washington's first administration, had finally come to an end. On this side of the water, too, there was no longer any great danger of internal commotion to be cared for. The dawn of the "era of good feeling" had come.

This time of outward rest was of no slight value for the inner strengthening of the Union. In this commonwealth, which develops with truly wonderful rapidity, as much progress is often made in months as in years in the more completely crystallized states of Europe. But it was a destructive delusion which now mastered many heads, that this momentary rest could become permanent. If a republican form of government were the condition precedent of the millenium, when lion and lamb will lie down together; if the United States was the land chosen by fate; yet the realization of this dream was now more distant than on

[1] In the next presidential election only 34 of the 217 electoral votes were cast for the Federalist candidates. Even Rhode Island had now cut loose from her union with Massachusetts and Connecticut, while little Delaware voted for Rufus King. How demoralized the party had become appears still more clearly from the fact that the three states divided up their vote for vice-president. Massachusetts voted for Howard, Delaware for Harper, and Connecticut divided her votes between Ross and Marshall. (Deb. of Cong., V., p. 662.) The union of the Federalist votes upon King was, on account of his peculiar position in regard to the war, an equally convincing proof of how deep the party had sunk in public estimation. He, like the other Federalists, had been opposed to the declaration of war, but had wished, when it had once been declared, that they should support it with all their strength. Compare Niles' Reg., VII., pp. 318, 326, 327.

the day of the birth of the Union. The dragon-seed of slavery had steadily grown rank and had already budded out so far that its true nature had often been recognized and very plainly pointed out. The violence with which former questions had been fought out, and their pressing importance, had, up to this time, only pushed this weightiest of all questions again and again into the background. But now it began every day to protrude itself more into the foreground, and in a few years it led to a crisis which was more dangerous than all the others through which the Union had passed since the adoption of the new constitution. The contest over the conditions of the admission of Missouri to the Union cannot be discussed until the history of the slavery question up to this time has been recalled.

At the outbreak of the American revolution slavery was a recognized fact in all the thirteen colonies. Whether it was thoroughly legal may at least be questioned. Neither according to the common nor the statutory law of England had slavery a legal existence, and both common and statutory laws were valid in the colonies so far as they applied to their circumstances and were not in opposition to their peculiar rights and privileges.[1] But the charters of the colonies make no mention of slavery, and give the colonies no legal powers from which an undeniable right for the

[1] The supreme court of the United States declared in 1815, in the case of the town of Powlet vs. Clark: "Independent, however, of such a provision [as appears in the first "royal commission" for the provinces] we take it to be a clear principle that the common law in force at the emigration of our ancestors is deemed the birthright of the colonies, unless so far as it is inapplicable to their situation or repugnant to their other rights and privileges. *A fortiori*, the principle applies to a royal province." Cranch, Reports, IX., p. 333; Curtis, Dec. of the Sup. Ct., III., pp. 370, 371. The first congress mentioned the common law, in its declaration of rights of Oct. 14, 1774, among the "indubitable rights and liberties to which the respective colonies are entitled." Journal of Congress, I., p. 28.

introduction of negro slavery can be deduced. Although the matter has no practical value, yet, based upon these grounds, the question may be asked whether the colonial laws, which start out on the supposition of the legality of existing facts, were of such a sort as to give slavery a really legal existence.[1] The fact of its existence was not only always recognized by the mother country, but the king's government constantly favored the introduction of slaves; and when different colonies wished to forbid their further importation it had repeatedly interposed with its decisive veto.[2] The colonists were fully convinced of the rightfulness of slavery, and up to the beginning of the revolutionary period there was only here and there a doubt expressed about its moral justice.[3] There are many reasons for the supposition that in some states, for instance in Virginia, the knowledge of the political and economic disadvantages of slavery found expression in these doubts. One of the first results of the contest with the motherland in regard to colonial rights was to direct attention, on a somewhat greater scale, to the moral side of the question. Until then the matter had been regarded almost exclusively in the light of positive religion. The Quakers have the honor of having begun the agitation from this standpoint earliest and most radically. Thanks to the fiery zeal of some members of this

[1] S. Hopkins, one of the first and most energetic opponents of slavery, declared in 1776, in his letter dedicated to congress, A Dialogue Concerning the Slavery of the Africans, Showing it to Be the Duty and Interest of the American States to Emancipate all their African Slaves: "The slavery that now takes place" is "without the express sanction of civil government." Goodell, Slavery and Anti-slavery, p. 76. See also p. 112, where a judicial decision of the supreme court of Massachusetts, which maintains this view, is quoted from Washburn's Judicial History of Massachusetts, p. 202.

[2] Lord Dartmouth declared in 1774: "We cannot allow the colonies to check or discourage, in any degree, a traffic so beneficial to the nation." W. Jay, Miscellaneous Writings on Slavery, p. 210. See also Bancroft, Hist. of the U. S., VI., pp, 413–415.

[3] See Life of J. Jay, I., p. 233; Adams, Works, X., p. 380.

sect, the religious and moral instruction of the slaves and the struggle against any further importation of the negroes were begun by the close of the seventeenth century. By the middle of the eighteenth century the emancipation of slaves had gradually become a matter of action by the whole Quaker body,[1] while similar attempts in other sects were rather the acts of individuals.[2] If the agitation had been wholly left to the churches it would have been long before men could have rightly spoken of a "slavery question."

It was due to the political philosophy of the 18th century that American politicians now began to concern themselves about slavery much more and from wholly new standpoints. The negro had been long looked upon, uprightly and honestly, as an animal. There was no consciousness whatever that any injustice had been done him. When conscience began to slowly assert itself, it was quieted by the argument that bringing heathen doomed to hell to America made the blessings of Christianity attainable to them. A sluggish faith could content itself with this lie, since it harmonized with worldly interests. But it could not stand before "sound common sense." The most notable characteristic of this period of the history of western civilization was that the French philosophers made the demands of sound common sense the basis of their political speculations and that the revolutionary politicians wished to make the results of these speculations the rule of conduct and the goal for practical politics. The American revolution was not based upon this philosophy, but the

[1] "By a resolution of that year [1774] all members concerned in importing, selling, purchasing, giving, or transferring negroes or other slaves, or otherwise acting in such a manner as to continue them in slavery beyond the term limited by law or custom [for white men], were directed to be excluded from membership, or disowned." Clarkson, p. 60. Two years later this resolution was extended to cover the cases of those who delayed to set their slaves free.

[2] See some interesting notes in Goodell, pp. 106–108, and elsewhere.

majority of its leaders were more or less affected by it. The more the struggle for definite political rights clothed itself in the glittering garb of a struggle for "freedom" in general, the more unavoidable it was that men should earnestly ask themselves whether their idealistic theories could be reconciled with the fact of slavery.[1] The idealistic impulse was not strong enough to overcome all the delays due to self-interest and political policy, but yet it was so great that the contrast between the institution of slavery and the theory of human rights was recognized as a question of practical politics, the solution of which must be found forthwith.

There was no thought of a direct attack upon slavery. It was supposed that by forbidding any farther importation of slaves, the gradual destruction of the institution would be accomplished. Erroneous as this hope was proved to be, it is readily explainable. The number of slaves at the outbreak of the revolution was about half a million.[2] But as the increase of the free population was greater than that of the slaves, the comparative number must have been more in favor of the former every year. Moreover, eman-

[1] Life of Jay, I., pp. 229, 231; Laurens, of South Carolina, in the Collection of the Zenger Club, pp. 20, 21, quoted by Greeley, in The American Conflict, I., p. 36; Bancroft, VI., p. 417; and many other authorities.

[2] According to the census of 1790, there were 697,897 slaves in the United States. These were divided among the different states as follows:

NORTH.		SOUTH.	
New Hampshire	158	Delaware	8,887
Vermont	17	Maryland	103,036
Rhode Island	952	Virginia	293,427
Connecticut	2,759	North Carolina	100,572
Massachusetts [6]		South Carolina	107,094
New York	21,324	Georgia	29,264
New Jersey	11,423	Kentucky	11,830
Pennsylvania	3,737	Tennessee	3,417
Totals	40,370		657,527

cipation was expected to make great advances everywhere and to become a rule almost without an exception, so that the abolition of slavery would be striven for on political and economic as well as moral grounds. According to the avowals everywhere made, it was only natural to suppose that sooner or later all slave-owners would say with Laurens of South Carolina: "I am devising means for manumitting many of my slaves. . . Great powers oppose me, the laws and customs of my country, my own and the avarice of my countrymen. . . These are difficulties, but not insuperable. I will do as much as I can in my time and leave the rest to a better hand."

As long as it was generally considered advisable that these wishes should have practical results, men acted with great unanimity. In the articles of the so-called "association," which the first congress adopted Oct. 20, 1774 and which was considered as the corner-stone of the Union, it was declared that after December, no more slaves should be imported and that the importations should not be aided in any way whatever.[1] Article II. declared that those who acted contrary to these articles of union ought to be "universally condemned as the enemies of American liberty," and article XIV. signalized "any colony or province" which did not enter into the union as "unworthy the rights of free men." These articles, as Chase of Ohio expressed it in the senate in 1850, were "ratified by colonial conventions, county meetings, and little gatherings throughout the country, and became the law of America—so to speak, the fundamental constitution of the first American union." It is noteworthy that some of the most emphatic declarations in favor of article II. and so against the importation of slaves came from slave states which

[1] Amer. Archives. 4th Series, I., p. 915.

were afterwards the earliest and most determined champions of slavocratic interests.[1]

During the next two years, the same standpoint was maintained. April 6, 1776, congress repeated the prohibition of the importation of slaves without any opposition from any quarter.[2] But a few months thereafter it became evident that in some states the suggestions of momentary self-interest had begun to be listened to. In the draft of the Declaration of Independence, Jefferson had bitterly complained of George III., because the latter had forbidden the attempts "to prohibit or restrain this execrable commerce." This passage was struck out, mainly at the request of the delegates from South Carolina and Georgia.[3] When we think of the later modes of speech of the slave-barons, we must admit, to the honor of South Carolina and

[1] This appears, for instance, in the declaration of the representatives of the Darien district in Georgia: "To show the world that we are not influenced by any contracted or interested motives, but a general philanthropy for all mankind of whatever climate, language or complexion, we hereby declare our disapprobation and abhorrence of the unnatural practice of slavery in America (however, the uncultivated state of our country or other specious arguments may plead for it)—a practice founded in injustice and cruelty, and highly dangerous to our liberties (as well as lives), debasing part of our fellow-creatures below men, and corrupting the virtue and morals of the rest, and is laying the basis of that liberty we contend for . . . upon a very wrong foundation. We therefore resolve at all times to use our utmost endeavors for the manumission of our slaves in this colony, upon the most safe and equitable footing for the master and themselves." Amer. Archives, 4th Series, I. p. 1136.

[2] Elliot, Deb., I., p. 54; Adams, Works, III., p. 39.

[3] Jefferson writes: "The clause was struck out in complaisance to South Carolina and Georgia, who had never attempted to restrain the importation of slaves and who, on the contrary, still wished to continue it." Jeff., Works, I., p. 170. This passage has been quoted in nearly every work on this period, but the fact has been almost wholly unnoticed that in South Carolina, at any rate, such attempts had been made. These efforts, however, had never attained so much significance that England had needed to oppose them, as she did in the case of Virginia. Elliot, Deb., V., p. 459.

Georgia, that they did not demand a strengthening of the passage because they had resolved, like Patrick Henry, to pay "the devoir to virtue" in gambling coin, that is, to satisfy their consciences by openly acknowledging the duty of reform and then to announce, by appealing to the weakness of the flesh, that they meant to persevere in the sweet sin.[1]

The excision of the passage I have mentioned from the Declaration of Independence was a turning point in the relation of congress to the slavery question. Men did not at once retreat, but they stood still, and *eo ipso* lost the ground already won. Up to this time congress, as a revolutionary body, had used only *de facto* power. Now, when it was endowed with legal powers, all control over slavery was taken away from it. The responsibility for this lies mostly on congress itself, since it elaborated the draft of the articles of confederation. It is not probable that the states would have made weighty concessions, but at least an attempt should have been made to keep what had already been obtained. The resolutions of 1774 and 1776 had not the force of law, and with the provision for leaving

[1] Patrick Henry writes, in January, 1773, to a Quaker: "Is it not amazing that, at a time when the rights of humanity are defined and understood with precision, in a country above all others fond of liberty, in such an age, we find men, professing a religion the most humane, mild, meek, gentle and generous, adopting a principle as repugnant to humanity as it is inconsistent with the Bible and destructive of liberty? Every thinking, honest man rejects it in speculation, but how few in practice from conscientious motives! . . . Would any one believe that I am master of slaves of my own purchase? I am drawn along by the general inconvenience of living without them. I will not, I cannot, justify it; however culpable my conduct, I will so far pay my devoir to virtue as to own the excellence and rectitude of her precepts, and lament my want of conformity to them. . . . We owe to the purity of our religion, to show that it is at variance with that law which warrants slavery. . . . I could say many things on this subject, a serious view of which gives a gloomy prospect to future times." Bancroft, VI., pp. 416, 417.

the regulation of commerce to the individual states congress resigned all right to again bring before its forum the question of slave-importation in any shape whatever.

The development of circumstances has shown the greatness of this mistake. Yet the blame should not be measured only by the greatness of the fault. During the years of war the slavery question could only find scanty attention, since congress was completely absorbed in the consideration of more pressing needs. Even in the north its consideration was postponed, so far as it was a national question. In regard to their own slaves several of the northern states went much farther than the continental congress had done. In New York gradual emancipation became a subject of earnest debate, and if the proposals in relation thereto could not at once be carried through, at least there was developed a righteous conviction that slavery could not exist there much longer. Pennsylvania did not put off the decision of the matter into the uncertain future, but at once assured her speedy and complete deliverance from the evil. In Massachusetts, before the Declaration of Independence, decisions had repeatedly been given by juries which can be justified only by the supposition that slavery had no legal existence in the colony.[1] But it was not till after the end of the war that the anti-slavery efforts again assumed more of a national character. The abolition societies of Pennsylvania sprang again into activity with greater energy and a broader programme; and in New York, Rhode Island, Connecticut, Maryland, Virginia, and New Jersey, abolition societies

[1] See this more in detail in Goodell, pp. 109–117. Yet the complete abolition of slavery in the north took a long time. It will astonish many readers to know that as late as 1840 Massachusetts, Maine, Vermont, and Michigan were the only states which contained no slaves at all. The number of slaves in the so-called free states in this year was 1,129. Census of 1840.

were founded by the aid of the most prominent citizens.[1] The southern states by no means saw in this movement from the beginning any interference with their "sovereign" right of autonomy or a declaration of war against an interest vital and peculiar to them. In them that spirit had not as yet wholly died out which not only wished a sweeping, practical acknowledgment of human rights, but also considered it as practicable and sought to compass it. Thus for instance, Virginia, in 1788, forbade the importation of slaves, and a committee which was charged with a revision of the statutes drew up a plan for a law for the gradual emancipation of all slaves. But wherever federal affairs which concerned slavery came up for discussion and for the passage of resolutions, there the southern states went boldly on in a way which showed how little belief they really had in the speedy end of the "abominable institution." July 12, 1777, the question of federal taxation was debated in congress. The article relating to it in the draft of the articles of confederation proposed that federal taxes should be laid in proportion to the total number of inhabitants in the different states. Chase of Maryland moved, instead of this, their imposition in proportion to the number of "white inhabitants," because taxation should be regulated by population and the slaves were "property," and the southern states would therefore be doubly taxed if the clause should be adopted in its present form. This argument was opposed by the delegates of the northern states. It is noteworthy that John Adams rested his opposition upon the assertion that the number of inhabitants should be adopted as the measure of the wealth of a state, and that slaves produced no less surplus wealth than freemen did. Wilson supported this view, and explained it

[1] In the five states last named the societies were first organized after the new constitution had come into force.

by saying that free laborers always produced more, but also, and in the same proportion, consumed more.[1]

On the 13th of October the question came once more before congress. After the proposition to lay federal taxes in proportion to the aggregate property of each state had been defeated, it was moved that slaves should be wholly exempt from taxation. The four New England states voted against this, Virginia, Maryland, and the two Carolinas for it. The decision then lay with the middle states. The vote of Pennsylvania and New York was divided. New Jersey, therefore, had the decision of the issue, and decided it in favor of the south.[2] In the debate of July 12, Harrison had proposed to reckon two slaves as one freeman in reference to taxation. Wilson had said, in reply, that this would be setting a premium on the farther importation of slaves. A northern state, and, indeed, a third-rate northern state, now paid this premium to the south at the cost of the Union.[3]

The full meaning of this first victory of the slave-holding interest was not appreciated at the south or at the north. The southern states were now thinking only of the protection of their own immediate interests; the idea of a slavocratic propaganda lay far beyond. After Virginia (March 1, 1784) had ceded her territory northeast of the river Ohio to the Union, a committee appointed on

[1] See the whole debate, according to Jefferson's notes, in Elliot, Deb., I., pp. 70–74.

[2] Bancroft, IX., p. 442: Wilson, Rise and Fall of the Slave Power in America, I., p. 16.

[3] In March, 1783, the report of the committee on the finances brought the question again before congress. The committee went back to the proposition made by Harrison in 1777. Madison moved, in place of this, that five slaves should be counted as three freemen. The amendment was adopted, but immediately thereafter the whole clause was stricken out. (Elliot, Deb., V., p. 79.) Hamilton, however, April 1, moved a re-consideration, and Madison's proposition was then adopted without opposition. (Ibid, V., p. 81.) Then and there the germ of the notorious "three-fifths compromise" was planted.

Jefferson's motion laid before congress a plan for the government of "the territory ceded or to be ceded by the different states to the United States." The latter phrase was understood as referring to the territory then belonging to North Carolina and Georgia, between 31° and 37°, which comprises the present states of Tennessee, Alabama, and Mississippi. The plan divided the whole territory into future states, and declared, among other things, that after the year 1800 "neither slavery nor involuntary servitude" should exist in them. Spaight of North Carolina moved, April 19, to strike out this passage. The four New England states, New York, and Pennsylvania voted to retain it; Maryland, Virginia, and South Carolina voted against it, and the vote of North Carolina was lost by the division of its delegates. The decision, therefore, lay again with New Jersey, since the articles of confederation made the vote of a majority of all the states necessary for the adoption of a resolution. As only one delegate from New Jersey was present, the vote of the state could not be given, and the slave interest therefore gained a victory again by this chance. The significance of this triumph was far greater than that of the first, on the question of taxation. If slavery had been eradicated from Kentucky, Tennessee, Alabama, and Mississippi, the free states would have soon had a decisive superiority. Without doubt this circumstance decided the votes of Maryland, Virginia, and South Carolina. But it would be transferring the spirit of a later time to this period if we should suppose that they aimed in this at the perpetuation of slavery and the formation of a slavocracy. The territories about which the discussion took place were ceded to the Union by slave states, and the latter therefore thought it only right and proper that slavery should be permitted to continue to exist in them as long as they were not free from it themselves. Their moral and political judgment on slavery was not shown by the vote. Interest had not yet become of such

power that self-deception had changed to conscious falsehood.

The so-called ordinance of 1787 gives a practical proof of the justice of this view of the case. July 11, 1787, a committee of which Nathan Dane, of Massachusetts, was chairman, laid before congress a plan for the government of the territory northwest of the Ohio. Article VI. of the "compact between the original states and the people and states in the said territory" forbade forever slavery and involuntary servitude, but provided for the surrender of fugitives "from whom labor or service is lawfully claimed in any one of the original states." The whole plan was unanimously adopted July 13 by the states, and the only member of congress who voted against it was Yates of New York.[1]

The readiness with which the northern half of the territory had been devoted to free labor was in sharp contrast with the stiff-neckedness with which the slaveholding interest of the southern states was simultaneously defended. While congress, in session at New York, voted the ordinance of 1787, the convention which was to draw up a practical constitution for the Union sat at Philadelphia. In this, too, some of the southern delegates remained true to the principles they had followed in Revolutionary times; but the decisive votes belonged to those who dismissed freedom and human rights with words, and demanded privilege after privilege for the sake of supporting slavery.

An exhaustive history of all the incidents of the struggle over these demands would exceed the limits set to this book.[2] The bare statement of the result does not come up to those limits. In these debates, for the first time, the

[1] The first congress under the new constitution ratified the ordinance August 7, 1789. Both acts are in the Statutes at Large, I., pp. 50–53.

[2] The reader who wishes to gain a more exact knowledge without searching at the sources (Elliot's Debates) will find a correct and interesting sketch in Curtis, History of the Constitution.

veil was rent which had hitherto made a clear conception of the true state of the slavery question impossible. The rents were wide enough to let it be seen that behind them lay a world of war, of war to the knife, although they did not show how this war would develop and how it would end.

The strife broke forth over the question of representation and of direct taxation. Wilson of Pennsylvania, a man of clear, statesmanlike ways of thinking, and a determined opponent of slavery, suggested that in regard to representation five slaves should be considered equal to three freemen.[1] He who draws his political inspiration simply and solely from his bible of principles plays Don Quixote. Political policy is a necessity. But a concession which involves a principle that can be neither morally nor politically justified is a heavy weight, which sooner or later becomes too heavy for the strongest political swimmer. In 1777 Wilson had branded Harrison's similar proposal as a premium on the importation of slaves. Now he himself offered the premium, but paid it in more valuable coin. The proposition was hastily adopted by nine votes to two,[2] and was afterwards again brought before the convention by a committee.[3] Thus Wilson did not alone encounter the reproach of having been faithless to his principles. The great majority of the convention approved of his proposition, and it was at the same time expressly pointed out that congress had already united on the same compromise between the northern and southern states on the question of taxation.

Wilson justified himself by the "necessity of a compromise."[4] In the course of the debate, Sherman and Ellsworth sought through each other to bring the parties

[1] Elliot, Deb., V., p. 181.
[2] Delaware and New Jersey.
[3] Elliot, Deb., V., p. 190.
[4] Ibid, V., p. 301.

nearer to one another and so urged the unavoidableness of a compromise. Gradually propositions were found on which the requisite majority agreed. The race of northern politicians who sated their thirst for glory by serving as trainbearers to the slavocracy had not yet arisen. The struggle was therefore severe. When the "three-fifths compromise" came up for the decisive vote, only Connecticut, Virginia, North Carolina and Georgia voted for it, and Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland and South Carolina against it.[1] Among the states in the negative, the first three and South Carolina naturally belonged there, although the latter's vote was determined by exactly opposite reasons.[2] All the southern states agreed with Randolph that they must demand an "especial assurance" in regard to their slaves by reckoning them in making up the ratio of representation.[3] Pinckney was not contented with this. He demanded the complete equality of slaves and freemen in this respect.[4] On the other side, the delegates of the northern states refused "to give such an encouragement to the slave-trade as would be involved in an allowance of representatives for the negroes." Gouverneur Morris added that the complete exclusion of the negroes would be unjust to the southern states, but, if he had only the choice between this or being "unjust to human nature," his decision could not be doubtful. But at the same time he expressed his conviction that the southern states "would never confederate on terms that would deprive them of the slave-trade."[5] The legalizing and direct encouragement in the constitution of a crying sin against human rights or the surrender of the Union—this, according to Morris, was the dilemma which

[1] Elliot, Deb., V., p. 301.
[2] Maryland wished only a change in the wording.
[3] Elliot, Deb., V., p. 304.
[4] Ibid, V., p. 305.
[5] Ibid, V., p. 301.

confronted them. His judgment found proofs of this in the expressions of part of the southern delegates during the debate over the slave-trade.

In the committee report, which Rutledge laid before the convention August 6, art. VII., sec. 4 of the draft of the constitution provided that "no tax or duty shall be laid by the legislature upon the migration or importation of such persons as the several states shall think proper to admit; nor shall such migration or importation be prohibited." Both the Pinckneys declared that South Carolina, Baldwin that Georgia, and Williamson that the southern states in general, could not adopt the constitution unless all legal power in these two particulars was denied to the legislature of the Union.[1] The northern states, they said, should be content with the assertion that "perhaps" all the southern states, following the example of Virginia and Maryland, would voluntarily forbid the importation of slaves, if the whole matter was left for them to decide. Charles C. Pinckney scorned to cover his views with such juggling dissimulation. He freely confessed that the most to be expected from South Carolina was an occasional prohibition of the importation.[2] The delegates from Connecticut have the sad honor of having encouraged the remainder of the southern delegates to throw off their masks. Roger Sherman deprecated the slave-trade, but thought that "the public good did not demand" that the right of importing slaves should be taken away from the states. Ellsworth went still farther. To the future chief justice of the United States, the "morality and wisdom of slavery" were matters which did not concern the Union. With a bold hand, he threw the dollar as a decisive weight into the balance.[3] And if

[1] Elliot, Deb., V., pp. 379, 459, 460.

[2] Ibid, V., p. 460; compare IV., pp. 272, 273.

[3] "Let every state import what it pleases. The morality or wisdom of slavery are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of

some of the most cultured men in the north treated the slavery-question with such moral and political stupidity, it is not strange that there were some men in the south who had completely done with the dreams of the Revolutionary period about a speedy general emancipation. Charles C. Pinckney bluntly said: "South Carolina and Georgia cannot do without slaves." Far from seeking excuses for this, he minutely followed up Ellsworth's argument.[1] Rutledge took the last step. He systematically rejected every argument drawn from "religion or humanity," because "interest alone is the governing principle with nations."[2] South Carolina, Georgia and North Carolina would not be "such fools" as to deprive themselves of such an important advantage.[3] So said another man, who was afterwards chosen for chief justice of the United States.

The extreme champions of the slaveholding interest cannot be reproached with not having clearly defined their position. The delegates of the northern states made the compact with open eyes and complete knowledge. Their motive, as they repeatedly declared at Philadelphia and later in the ratification conventions of the different states, was the firm conviction that only in this way could the Union be maintained.

their particular interest. The old confederation had not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one." Elliot, Deb., V., p. 457.

[1] "He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury." Ibid, V., p. 459. Compare IV., p. 296.

[2] "Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is, whether the southern states shall or shall not be parties to the Union. If the northern states consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers." Ibid, V., p. 457.

[3] Ibid, V., p. 460.

The compromise, as the bargain was called, contained two points: (1) representation and direct taxation should be in the same ratio, and in estimating them five slaves should be reckoned as three freemen;[1] (2) congress was forbidden to prohibit the importation of slaves into the states then existing before the year 1808, but it was allowed to lay a tax of not more than $10 *per capita* on the importation.[2]

These provisions did not concede everything which had been asked by some of the southern delegates. Whether and how far they can be called a compromise demands more careful examination.

Under the confederation the states, as such, were represented, and hence each had an equal voice. This principle was preserved in a modified form by the system of representation in the senate. For representation in the house, the population was taken as a basis. This was not the development of one distinct and clearly formulated conception. In the debates the most common expression was that the population was the best measure of the industrial capacity, that is, of the public well-being. But if this supposition was just and if the representation should be measured by the public well-being, then no objection can be made to the first part of the compromise, provided the relation between the productiveness of slaves and of freemen was measured with approximate accuracy. Yet the south pretended that it far surpassed the north in wealth and constantly used this circumstance as a pretext for the more emphatic urging of its claims. If this assertion was well founded, then its quota of representatives as well as of taxes was set too low. It did not rest its claim to greater wealth upon higher industrial capacity or greater industry. The extent of the states, the fertility of the soil, the remarkable value of its products and its slaves were the main

[1] Art. I., Sec. 2, § 3.
[2] Ibid, Sec. 9, § 1.

features in its inventory. It acknowledged by this that outside of the number of people, many other causes must be taken account of in order to determine, even approximately, industrial capacity. It was, therefore, evidently unjust to apportion representation and direct taxes simply according to the number of people, when this was considered only as a measure of industrial value. But besides this, and above all, the selection of public wealth as the basis of representation is in contradiction to the idea, not only of a democratic republic, but of any sort of representative state. The idea of representation is always based, more or less, upon the individual, to whom as a member of the political community, an indirect share in the regulation of political affairs by representation belongs. The fact that the political institutions of no state have ever fully realized this idea, and that they never can fully realize it, is a matter of no moment. Institutions realize the idea more or less closely, and whether this right belongs to all men of full age or only to a part of them, who thus act, so to speak, as trustees for the whole people, involves a difference of degree, not kind. Even where a so-called representation of interests or a grouping of population with a graduated quota of representation exists, the idea of representation remains the same. Interests as such are not represented, but, instead, a number of individuals, as the managers of certain interests; and the gradation of the right of representation only recognizes the principle that this right should be measured by the proportion of certain industries to the whole, but does not thrust out of sight the principle that to the individual, as a member of the political community, an indirect share in the regulation of political affairs by representation belongs. But, by the nature of things, the supposition of this right must rest on the political existence of the individual, or, at least, on the full recognition by the state of his personal existence. The slaves were evidently not citizens, and in the southern states

they practically lacked, in the right meaning of the word, a personal existence, although the constitution designated them as "persons." As a general rule, the slave had no rights, for every right is positive, while the so-called rights of the slave were merely negative, that is, were limitations of the arbitrary power of his master. It was therefore a contradiction in itself to speak of the representation of slaves. The rights and interests of the slaves were not represented, but the people who considered it their interest to keep the slave absolutely without rights were, as the owners of human chattels, more fully represented than others entitled to representation. It has never been denied that not only were the states represented in relation to their population, but that also the population of the states ought to be represented. Yet Charles C. Pinckney openly declared in the debates of the legislature of South Carolina over the constitution that the slaves would be reckoned in the representation as property, so that the slaveholders, besides their right of representation in proportion to the population of freemen and of persons bound to service for a certain time, would have a still further right of representation as the owners of this especial sort of property.[1] This, indeed, cannot be read in plain words in the constitution. It does not at all say Who or What is to be represented, but speaks only of the apportionment of representation. This circumstance was made great use of by those northern politicians who did not justify the bargain by sad necessity, but sought to demonstrate its complete equity. Through all this whirl of sophisms, however, we always come back to the simple facts that a representation of property was granted to the south, which the north did not have, and that as a result of this the vote of the owner of

[1] "We thus obtained a representation for our property; and I confess I did not expect that we had conceded too much to the eastern states, when they allowed us a representation for a species of property which they have not among them." Elliot, Deb., IV., p. 283.

fifty slaves was of as much weight, in regard to representation in the house of congress, as the votes of thirty freemen.

In the ratification conventions of the northern states, the defenders of the constitution made the farther assertion that, since the slaves were also reckoned in the apportionment of direct taxes in the proportion of five to three, a just recompense was made to the north for this concession. The fictitiousness of this statement, however, is shown by the fact that the direct taxes which were to be raised were not worth speaking of. Moreover, the north paid much more than its share of indirect taxes, because as good as nothing flowed into the federal treasury from the whole slave population in this way. The south had gained the advantage in representation as well as in the taxes for the support of the federal government.

In regard to the second part of the compromise, it was possible for the northern delegates to assert, at the same time, that the maintenance of the Union would have depended upon its adoption, provided the threats of the delegates of the two Carolinas and Georgia would have been made true by their respective states.[1] But many of the defenders of the constitution also praised the provision concerning the importation of slaves as a great gain for the north and for freedom. This view, as well as its opposite, can be better defended the farther back a man

[1] Some later utterances of the delegates show that these states might safely have been put to the test. Thus, for instance, Charles C. Pinckney said in the legislature of South Carolina: "The honorable gentleman alleges that the southern states are weak. I sincerely agree with him. We are so weak by ourselves that we could not form a union strong enough for the purpose of effectually protecting each other. Without union with the other states South Carolina must soon fall. Is there any one among us so much a Quixote as to suppose that this state could long maintain her independence if she stood alone, or was only connected with the southern states? I scarcely believe there is." Elliot, Deb., IV., pp. 283, 284

chooses his standpoint from which to judge. Under the articles of confederation it was claimed that congress had no control whatever over the importation of slaves. It was evidently, then, an advance that it could now hinder it by taxation, and could, after twenty years, forbid it altogether. This was answered by Madison's remark in the convention, that twenty years would be sufficient for working the evil that was to be feared from permitting the importation of slaves.[1] Mason had been of the same opinion, and had given as the ground of his belief that the west was already strongly desirous of introducing slavery. On the other side, men consoled themselves with the hope that a prohibition of importing slaves from Africa, even after twenty years, would still suffice to assure the gradual destruction of slavery.[2] This view was contradicted with great decision by a very important section of the country. In the legislature of South Carolina, the clause concerning the import of slaves met with the strongest opposition that was anywhere shown against the constitution. Charles C. Pinckney considered the reprieve of twenty years that had been agreed upon as amply sufficient, and declared, in relation to it, that he would oppose every limitation of the importation "as long as an acre of marsh is uncultivated in South Carolina." Barnwell, too, ridiculed the fear that the eastern states, even after twenty years, would so little grasp their true interest as to put obstacles in the way of the importation,—"without we ourselves put a stop to them, the traffic for negroes will continue forever."[3] The

[1] Elliot, Deb., V., p. 477.

[2] "But we may say that although slavery is not smitten by apoplexy, yet it has received a mortal wound and will die of a consumption." Dawes, in the ratification convention of Massachusetts, Elliot, Deb., II., p. 41. Compare also Wilson, in the Pennsylvania convention, Ibid, II., p. 452. John Adams wrote in 1801, with a mistaken view of facts that is hard to understand: "The practice of slavery is fast diminishing." Adams, Works, IX., p. 92.

[3] Elliot, Deb., IV., pp. 296, 297.

doubt cast on the pretended victory of the cause of freedom by such utterances seemed still more grave when men's minds went back to the history of the time from 1774 to 1776. Then the delegates from all the colonies had been for putting an end at once and forever to the slave-trade. Now Virginia was reproached with opposing unlimited importation only through motives of "interest," and South Carolina was aware only of "religious and political prejudices" of the eastern states against slavery.

Yet men's minds needed not to go back so far in order to find reasons for thinking that the public judgment on slavery had become more lax. The constitution contains still a third provision affecting slavery, which, strangely enough, received very little attention in the ratification conventions of the northern states. Art. IV., sec. 2, § 3 provides that persons lawfully bound in any state to "service or labor," who fled into another state, should not be released from the service or the labor by a law or "any regulation" of the latter, but should be delivered up on demand. This clause was unanimously adopted, without debate, by the convention at Philadelphia.[1] This was a backward step of great import and disastrous consequences. The articles of confederation had contained no similar provision and it had never been pretended that the rendition of fugitive slaves was a self-evident duty. Even Charles C. Pinckney admitted that the south had gained a new right in this.[2] If the articles of confederation had imposed no limits whatever upon the states in regard to slavery, they had also, on the other hand, imposed no duties whatever upon the Union. The new constitution did this and this is the weak point of the slavery compromise of the

[1] Elliot, Deb., V., p. 492. Only the wording was changed in the final revision of the constitution. The clause referred, too, to apprentices and the so-called "bound servants," but it was self-evidently especially directed against fugitive slaves.

[2] Elliot, Deb., IV., p. 286; see also p. 176

constitution. Slavery was not made a federal institution and the constitution did not contain, as was later asserted, a formal "guaranty"[1] of the "peculiar institution," but it recognized it not only, as the articles of confederation did, by silence; there were three provisions of the greatest weight in favor of slavery contained in the fundamental law of the Union, and, without regard to the contents of these provisions, by means of them a mighty pillar of support was thrust under the rotten structure. Although the words "slave" and "slavery" were not used in them, yet this was not only a matter of no value, but made the thing still worse. Never have men tried by such a pitiable trick to lie to themselves and the world about facts which could no more be lied away than the sun from the firmament. But the worst of it was that these circumlocutions were used on the demand, not of the south, but of the north.[2] The plantation-owners had already become such complete slavocrats that their ears were no longer offended by the word which carries in its sound its condemnation; and the north, which was henceforth to bear the banner of freedom alone, had already become such a moral coward that it tried to escape, by shunning the word, the responsibility for the legal recognition of the thing.

Some of the most determined opponents of slavery afterwards sought, strange to say, a just basis for their strug-

[1] In Prigg vs. The Commonwealth of Pennsylvania, however, the supreme court of the United States declared: "Historically, it is well known that the object of this clause was to secure to the citizens of the slaveholding states the complete right and title of ownership in their slaves, as property, in every state in the Union into which they might escape from the state where they were held in servitude. The full recognition [!] of this right and title was indispensable to the security of this species of property in all the slaveholding states, and, indeed, was so vital to the preservation of their domestic interests and institutions that it cannot be doubted that it constituted a fundamental article without the adoption of which the Union could not have been formed." Peters, Rep., XVI., p. 611; Curtis, XIV., pp. 420, 421.

[2] Elliot, Deb., II., pp. 451, 452; IV., pp. 102, 176; V., p. 477.

gle against it in the fact that the constitution recognizes no "slaves" but only "persons." This would make a good theme for very logical dissertations, but the dissertations cannot destroy the strong band of the logic of facts, by which the south tugged the north, step by step, farther along its path. It has already been related in another chapter, with what arrogance the south seized the first opportunity to do so. It could be answered, but it could not be silenced. Fig-trees do not grow from thistles in America any more than elsewhere. The principle had been bargained away for the sake of the Union, and hence every new demand dictated to the slavocracy by the impulse of self-preservation presented to the north the alternative of yielding and therewith taking a farther step away from the right principle or of endangering the Union. This was the result which the relentless logic of historic justice, that is, of the moral order of the world, involved. Taxes could be laid without tearing the Union asunder, only as long as in the south the interests bound up in the Union outweighed the slavocratic interests. The longer men shrank back from the test, so much the more dictatorially did the south necessarily speak, so much the more did it necessarily demand, so much the more was necessarily conceded to it, so much the more did the distinct slavocratic interest necessarily outgrow the interests connected with the Union.

An earnest struggle of the southern states against slavery on their own initiative was impossible as long as they thought that not only their industrial well-being, but their very industrial existence, depended upon it. But this conviction already existed, at least in South Carolina and Georgia.[1]

[1] In the debates of the legislature of South Carolina over the constitution, Lowndes said: "Without negroes, this state would degenerate into one of the most contemptible in the Union," and Charles C. Pinckney: "I am as thoroughly convinced as that gentleman is, that the nature of our climate and the flat, swampy situation of our country oblige

If it remained confined to these states and grew weaker elsewhere, then human rights and the blessings of free labor would necessarily and steadily gain ground. If it struck deeper root and spread wider, then human rights, free labor and all freedom, political, religious and moral, would perforce ever bow lower under the yoke of the slavocracy, as long as men would neither sacrifice the Union nor venture to fight for the Union. The preservation of the *status quo* was impossible.

us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste. . . We . . . assigned reasons for our insisting on the importation, which there is no occasion to repeat, as they must occur to every gentleman in the house." Elliot, Deb., IV., pp. 272, 285. The debates of the Georgia convention are not preserved, but the votes of the Georgia delegates at Philadelphia and the way in which they let the South Carolina delegates speak for them fully justify the assertion made in the text. In May, 1789, the first skirmish in congress on the slavery question took place. The provocation thereto was the motion by Parker of Virginia to lay a tax of $10 per head upon slaves imported. Jackson of Georgia said on this occasion: "They [gentlemen] do not wish to charge us for every comfort and enjoyment of life and at the same time take away the means of procuring them; they do not wish to break us down at once." Deb. of Congress, I., p. 73. Georgia was for a long time the only state which permitted the importation of slaves. South Carolina did not repeal her prohibition, which had existed since the time of the Philadelphia convention, until 1803. Georgia had then again forbidden it and by a clause in the constitution of 1798. Opinions of the Attorneys General, I., p. 449.

CHAPTER VIII.

History of the Slavery Question from 1789 until the Missouri Compromise.

Washington had written as early as 1786 to Lafayette that he "despaired" of seeing the spirit of freedom gain the upper hand.[1] Politicians and people, however, continued to be convinced of the contrary, although under the new constitution proofs of the justice of Washington's view rapidly accumulated. A most notable symptom of this was that no one was conscious how quickly the nation was striding forward on the wrong path. The constant speaking and writing about freedom during the Revolution bore evil fruits. The gulf between abstract political reasoning and the actual development of freedom had become perilously broad. Not only was the faculty of political judgment hurt, but the political will of the nation had suffered. Men became impatient and unjust because they had talked themselves into believing the flattering illusion that in the struggle against the injustice of others, one starts from the absolute principle of justice. The speediest courser on the road to despotism is a principle ridden without reins. If men had given themselves up to gross illusions, at first, in regard to the readiness with which real interests would be sacrificed at the altar of principle, they now ruthlessly rejected the principle for the sake of empty prejudices. Their position on the slavery question might have been more or less excused by sad political necessity. But for the shameful treatment of the free men of color, not even this dubious justification can be brought forward

[1] Wash., Writ., IX., p. 163.

—at least not yet—and it therefore throws an especially clear light upon how far the principles of the Declaration of Independence, with their consequences, had become flesh of the flesh and bone of the bone of the people.

The free men of color, especially those in the northern states, had had an honorable share in the war of independence. On different occasions, as, for instance, at the defense of Red Bank, they had greatly distinguished themselves. The republic now praised them for this, while congress declared them unworthy to serve in the militia.[1] This did the slaveholders a service that involved the greatest consequences, for it had now been recognized as a fundamental fact that race and color were principles which should necessarily be taken account of in making laws.

The consequences logically resulting from this fact were practically followed up so widely that they almost instantly amounted to an emphatic recognition of slavery as a national institution. In the southern states, slavery was looked upon as, without doubt, the natural position of persons of color, so that the presumption of the law was that every colored man was a slave.[2] If the freedom of a colored man was questioned by any one whatever, the burden of proof to the contrary rested on him. This upsetting of the fundamental principle of law recognized by all civilized peoples—*affirmanti, non neganti, incumbit probatio*—was formally approved by congress when it resolved that, in the District of Columbia, over which the constitution gave it unlimited power,[3] the laws of Maryland and Virginia should respectively remain in force.[4] Yet this is not

[1] Law of May 8, 1792. Stat. at Large, I., p. 271.

[2] "In a state where slavery is allowed, every colored person is presumed to be a slave." Prigg vs. Commonwealth of Pennsylvania. Peters, Rep., XVI., p. 669; Curtis, XIV., p. 470.

[3] Art. I., Sec. 8, § 17.

[4] Law of Feb. 27, 1801; Stat. at Large, II., p. 105. The part of the District ceded by Virginia was afterwards given back to that state. In the report of the committee for the District, Jan. 11, 1827, it is affirmed:

all. Henceforth slavery existed in the District only by virtue of this law —a slavery with a code which was a veritable muster-roll of horrors. It is possible, and in truth probable, that most members of congress were not aware what sort of abominations they had made laws of the Union by adopting the slave-code of Maryland, then nearly a century old.[1] But how far does the excuse reach? If human rights had already become so much of a lie, as far as race and color were concerned, that it was no longer deemed worth the trouble to inquire what laws were made about them, then the nation was only one step from letting such outrages against the first demands of justice, humanity and morality, to say nothing of the principles of freedom, be framed into laws with the full consciousness of their meaning. History affords proof of this.[2] Some decades after-

"In this District, as in all the slave-holding states in the Union, the legal presumption is that persons of color going at large without any evidences of their freedem are absconding slaves and *prima facie* liable to all legal provisions applicable to that class of persons." Reports of Committees, XIX Congress, 2d Sess., I., No. 43.

[1] "Laws of the Union" so far as congress, according to the decision of the supreme court of the United States, is not simply the local legislature of the District, but acts, even in this respect, as the legislature of the Union. In Cohens vs. Virginia (1821) the court affirmed that "this power . . . is conferred on congress as the legislature of the Union; for strip them of that character, and they would not possess it. In legislating for the District, they necessarily preserve the character of the legislature of the Union. . . Those who contend that acts of congress made in pursuance of this power do not, like acts made in pursuance of other powers, bind the nation, ought to show some safe and clear rule which shall support this construction and prove that an act of congress clothed in all the forms which attend other legislative acts, and passed in virtue of a power conferred on and exercised by congress as the legislature of the Union, is not a law of the United States and does not bind them." Wheaton, Rep., VI., pp. 424, 425; Curtis, V., p. 112.

[2] In the report already quoted of the committee for the District of Columbia, it is said: "If a free man of color should be apprehended as a runaway, he is subjected to the payment of all fees and rewards [!] given by law for apprehending runaways; and upon failure to make such payment is liable to be sold as a slave." The committee recommended

wards, through the direct action of congress, it became law at the seat of the national government that persons known to be free should be sold as slaves in order to cover the costs of imprisonment which they had suffered on account of the false suspicion that they were runaway slaves. And this law was repeatedly put into full effect. How many crowned despots can be mentioned in the history of the old world who have done things which compare in accursedness with this law to which the democratic republic gave birth? Can all history furnish a second example of a nation throwing so great a lie, with such insolent hardihood, in the face of the world, as the United States, with their belief in the principles of the Declaration of Independence, did for almost a century?

The judgment is hard, but just. Many people will not allow the least blame to be cast on this period, because it does not harmonize with their admiration of the "fathers," and because they have adopted, without any proof, the common view that the deeper shadows of slavery and slavocracy first appeared comparatively late. If we consider the spirit which filled the law-makers as the essential thing, we can still accept this view only as a partial justification. In order to judge of the spirit rightly, we must by no means fall into the very common error of overlooking the sins of omission chargeable to congress. In reading through the debates, single striking instances of injustice do not make the deepest impression. It is the omnipresent unwillingness to practice justice towards colored person —yes, even to recognize them as actual beings. When the defense of their rights is demanded, then congress has always a deaf ear. The representatives of the slave states oppose to every demand their firm and yet passionate *Non possumus* with a consistency and energy which would have

that the municipality of Washington should be charged with the costs, but the law remained unchanged.

reflected honor on the papal curia. And in most cases they carry the majority with them.

Swanwick of Pennsylvania laid before the house of representatives, Jan. 30, 1797, a petition from four North Carolina negroes who had been freed by their masters. Since a state law condemned them to be sold again, they had fled to Philadelphia. There they had been seized under the fugitive slave law, a full explanation of which is given hereafter, and now prayed congress for its intervention. Blount of North Carolina declared that only when it was "proved" that these men were free, could congress consider the petition. Sitgreaves of Pennsylvania asked, in reply to this, what sort of proof was offered that the four negroes were not free. This question received no answer. Smith of South Carolina and Christie of Maryland simply expressed their amazement that any member whatever could have presented a petition of "such an unheard-of nature." Swanwick and some other representatives affirmed that the petition must be submitted to a committee for investigation and consideration, because the petitioners complained of violation of their rights under a law of the Union. No reply could be made to this and no reply was attempted. This decisive point was simply set aside, and it was voted by fifty ayes to thirty-three noes not to receive the petition.[1] Congress acknowledged by this vote the truth of the view expressed by Christie, that under the fugitive slave law no injury could happen to a freeman. In order to reach this result, Smith had produced the customary impression by the declaration that the refusal of the demand made by the representatives from the southern states would drive a "wedge" into the Union. When, three years later, the same question was brought before congress again by a petition of the free negroes of Philadelphia, Rutledge of South Carolina declared in even

[1] See the debate in Deb. of Congress, II., pp. 57-60.

plainer terms that the south would be forced to the sad necessity of going its own way.[1]

It was always especially distasteful to the representatives of the south to see the crime of slavery brought before congress by colored people. But the whites who troubled themselves about slaves or free colored persons had no better reception. Year after year the Quakers came indefatigably with new petitions, and each time had to undergo the same scornful treatment. In 1797, the yearly meeting at Philadelphia set forth some especial wrongs in a petition. The most prominent place in the document was occupied by a complaint against the law of North Carolina, which condemned freed slaves to be sold again. Many southern delegates expressed, in a bullying fashion, their scorn for the tenacity with which these men of earnest faith ever constantly came back again to their hopeless work. Rutledge and Parker demanded that the petition should be laid "under the table."[2] Rutledge even wished that "a sharp reproof" should be sent to the petitioners. But the defenders of the right of petition succeeded, this time, in having the memorial referred to a special committee. No attention, however, was paid to it there.

The year before, Delaware had laid before congress a memorial in regard to kidnapping. In reply to a question put by Murray, Swanwick declared that the term "kidnapping" was to be understood as referring both to running slaves off in order to free them and to the stealing of free negroes in order to sell them as slaves.[3] Although congress was asked to take action in this case by a slave state, yet the representatives from the rest of the south

[1] Deb. of Congress, II., p. 443.

[2] Ibid, II., pp. 183, 185. The proposal was applauded. Christie and Jones of Georgia repeated it in 1800 on a similar occasion. Ibid, II., p. 439.

[3] Yet it appears from an utterance of J. Nicholas of Virginia, that it was especially desired to put an end to the hunt after free colored men.

were not willing to allow it to "meddle" in any way whatever with matters concerning slavery, since the power to do so might be afterwards used against slaveholding interests. W. Smith affirmed that slavery was a "purely municipal" affair. Representatives from the northern states supported this view from different motives. Coit of Connecticut asserted that "the laws of the different states were amply sufficient" to stem the evil. On his motion, and by forty-six to thirty votes, the question was postponed in such a way that it could not come before the house again. The assurance given by the states most concerned that their laws could not suffice for this purpose, especially since they could have no jurisdiction whatever on the water, received no attention, although it was generally admitted that the evil existed to a marked extent.

In all the cases mentioned, the tactics of the representatives of the slaveholding interest were the same and they maintained them unchanged up to the last. If congress was urged to act in any way which did not please them, then slavery was always a "purely municipal affair." Then the literal interpretation of the constitution was insisted upon; every constructive power of congress was declared to be inadmissible; and it was thus stripped of all power, since no authority over slavery, except in regard to the importation of slaves, was directly granted it. But if the act of congress was in their interest, then, just as steadily, exactly the opposite path was pursued. Then was heard the reasoning: the southern states would never have ratified the constitution if complete security in regard to slavery had not been promised them; all interests should have equal rights and equal claims to the protection of the Union. And from the first instant a sufficient number of members from the north clasped hands with the south to make the laws a mere nose of wax in the hands of the latter. So the slaveholding interest found it as easy to carry

through its own demands as to reject the demands of its opponents.

December 22, 1789, North Carolina ceded the territory claimed by her to the Union. The deed of cession stipulated ten conditions,—among them "that no regulations made or to be made by congress shall tend to emancipate slaves." April 2, 1790, congress accepted the cession without any discussion.[1] April 2, 1802, Georgia ceded, in a similar way, her western territory, and in doing so imposed the condition that the ordinance of 1787 should be valid therein, in all its parts, "except only the article which forbids slavery."[2] That congress accepted the cessions in this form without even an attempt to make a change in the conditions, is the more remarkable, because in this case the constitution can well be relied upon. The constitution declares that "congress shall have power to dispose of the territory and all the property belonging to the United States, and to make all necessary rules and regulations for the same."[3] This clause is quite absolute and peremptory. Congress had also unquestionably a right, if it seemed good to it, to legalize slavery in the territories, but it could not bind itself and all future congresses (for this was what the states which made the cessions wished to have publicly understood) to a limitation of its constitutional powers.

In the same year that congress took into the possession of the United States, under the conditions already given, the western territory of North Carolina, the treaty power had already been used in favor of the slave-holders. The irony of fate willed that this should be the first treaty to be completed under the new constitution. August 7, 1790, a treaty with the Creek Indians was agreed upon in New

[1] Stat. at Large, I., pp. 106-109.

[2] In Little, Brown and Co.'s edition of the statutes at large, which I used, the deed of cession and its acceptance by congress are not given. In Bioren and Duane's edition they may be found in vol. I., p. 488.

[3] Art. IV., Sec. 3, § 2.

York.[1] By its terms the Creeks bound themselves to deliver up the slaves who had fled to them from Georgia, and to hold the Seminoles, who lived in Spanish Florida, to the same duty. That the president and senate had the right to insert in a treaty stipulations in favor of the slaveholders, cannot be questioned, since the treaty power, according to the provisions of the constitution, is unlimited. But a duty to do so could under no circumstances exist, since slavery was only an institution of the individual states, but not of the United States. The Union therefore made itself a direct accomplice in the crime of slavery, when it voluntarily used its power in behalf of the specific interests of the slaveholders. If, in regard to the slavery compromises of the constitution, it should be boldly affirmed that so far as the Union was concerned, slavery was only a recognized fact, with which it had nothing to do, yet this was now, at least, no longer true. According to the constitution, treaties are "the supreme law of the land." Such treaty stipulations practically recognized slavery as an institution, in behalf of which the legislative power of the Union should be used.

Three years later this happened in a much more direct way. Mention has already been made of the clause of the constitution which provides that persons bound to service or labor who flee into another state shall not be released from their service or labor, as the result of any law or regulation whatever of this state, but shall be delivered up upon the demand of the person to whom the service or labor is due. This clause thus limited the legislative power of the states, and laid upon the states an obligation.[2]

[1] Stat. at Large, VII., p. 35.

[2] This view is in opposition to the decision of the supreme court of the United States. In the case of Prigg vs. Commonwealth of Pennsylvania it is declared that "the clause is found in the national constitution, and not in that of any state. It does not point out any state functionaries or any state action to carry its provisions into effect. The

Action by congress on this matter was not demanded, at least not immediately. Yet in 1793 it passed, of its own

states cannot therefore be compelled to enforce them, and it might well be deemed an unconstitutional exercise of the power of interpretation to insist that the states are bound to provide means to carry into effect the duties of the national government nowhere delegated or entrusted to them by the constitution. On the contrary, the natural, if not the necessary, conclusion is that the national government, in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, judicial, or executive, as the case may require, to carry into effect all the rights and duties imposed upon it by the constitution." Peters, Rep., XVI,, pp. 615, 616; Curtis, XIV., p. 424. But it is a fundamental doctrine of American constitutional law, which has never been questioned, that "the constitution of the United States is a part of the law of every state." (Chief justice Taney said in the same case: "And the words of the article which direct that the fugitive shall be delivered up seem evidently designed to impose it as a duty upon the people of the several states to pass laws to carry into execution in good faith the compact into which they thus solemnly entered with each other. The constitution of the United States, and every article and clause in it, is a part of the law of every state in the Union, and is the paramount law." Peters, Rep., XVI., p. 628; Curtis, XIV., p. 435.) It repeatedly applies directly to the states, as well in prohibition (Art. I. Sec. 10.) as in command (Art. I. Sec. 4, § 1). It can not be inferred from the simple fact that the clause is in the constitution of the Union, that it does not bind the states to perform a direct action, but the decision of the supreme court is supported only by this fact. The clause is not expressed with especial clearness, but, judged by the usual meaning of the words, it unquestionably applies much more directly to the states than to the federal powers. However great weight I generally give to Story's reasoning, I cannot in this case find any sound argument in his work against my view that the states were not only allowed, but obliged, to provide, of their own motion, until the passage of a federal law, a means by which the rights given the slaveholders by this clause could be secured. This does not contradict the broader and evidently just decision of the supreme court of the United States, that congress had the right, and that it was its eventual duty, to regulate this question by a federal law, which would then evidently and *eo ipso* set aside all the state laws concerning the matter. Art. I., Sec. 8, § 4 (the provision concerning a bankrupt law) is a proof that the constitution recognizes rights which congress may or may not use, and which belong to the individual states until it sees fit to use them. The same fundamental fact seems to me applicable also to duties.

motion,[1] a fugitive-slave law.[2] In the house of representatives the bill was passed by 48 votes against 7, and, as it seems, without any debate worth mentioning.[3] The vote on this truly barbarous law shows what claim colored people had to human rights; how much truth there was in the exaggerated complaint that hard fate imposed the curse of slavery upon the land; and how terribly earnest, not only at the south, but in the congress of the Union, the "legal presumption" of the slavery of every colored person was.

The law empowered the pretended owner, or his agent, to bring the alleged fugitive "before any magistrate,[4] of a county, city, or town corporate," in order to obtain a decision which ordered the return of the fugitive to the state or territory from which he had escaped. The supreme court of the United States afterwards acknowledged that doubt might be cast upon the constitutionality of this provision. It declared that state magistrates could use the authority thus entrusted to them by congress when

Only here the freedom of action of congress is limited by time. It ceases as soon as a decisive cause makes the conditional duty an unconditional one.

[1] In order to escape the reproach of inexactness the history of this law must be given somewhat more in detail. The immediate cause of it was a message of Washington. This was due to the governor of Pennsylvania, who reclaimed a criminal who had fled to Virginia. The expression used in the text is therefore so far justified that complaint had not been made of an ineffectual reclamation of a fugitive slave.

[2] Approved by the president Feb. 12. Statutes at Large, I., pp. 302–305.

[3] Deb. of Congress, I., p. 417. It is not apparent what the motives of the seven representatives (among them two from slave states) who voted in the negative were.

[4] Bouvier, Law Dictionary, II., p. 86, defines "magistrate" as "a public civil officer invested with some part of the legislative, executive, or judicial power given by the constitution; in a narrower sense this term includes only inferior judicial officers, or justices of the peace." I know of no judicial decision in which the meaning of magistrate in this connection is exactly stated.

they were not prevented from doing so by state laws.[1] But this may well be doubted. Congress certainly could not oblige these state magistrates to use the powers given them, inasmuch as in their capacity as magistrates it could impose no duties whatever upon them. The voluntary use of the power, with the silent consent of the states, therefore appears possible only under the fiction that congress made all the state magistrates mentioned in this law federal magistrates for certain defined cases. Yet this formal reasoning is the least reproach which can be brought against the law. Legally, the decision of the question whether the fugitive was a runaway slave was not in the least prejudged by the permission given to take him back; but actually his fate was thereby sealed in nearly every case. That which is dearest to man was made subject to the judgment of a single person, an inferior magistrate. This was not only a shocking disregard of the first principles of justice, humanity, and freedom, but it was also a crying wrong to the spirit of the constitution, provided, of course that the "legal presumption" of the slavery of every colored person was not already to be found in the constitution.[2] The Seventh Amendment provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." Men learned in the law might dispute

[1] Prigg vs. Commonwealth of Pennsylvania, Peters, Rep., XVI., p. 622; Curtis, XIV., p. 430.

[2] Judge McLean says in the case of Prigg vs. Commonwealth of Pennsylvania: "Both the constitution and the act of 1793 require the fugitive from labor to be delivered up on claim being made by the party or his agent to whom the service is due, not that a suit should be regularly instituted." (Peters, XVI., p. 667; Curtis, XIV., p. 469.) If this can be deduced from the wording of the constitution,—and there is much to be said for this view —then, indeed, "the proceeding authorized by the law" must be "summary and informal." In this case each atrocious provision of the law becomes less of a burden for congress and more of a burden for the Philadelphia convention.

whether the question of freedom or slavery was "a suit at common law"; slaveholders might deny that the freedom of the colored person was worth twenty dollars; but it must shock the sound common sense of every right-thinking man that in a land where suits for anything worth twenty-one dollars could be brought on demand before a jury, a man could be handed over to life-long slavery by any village judge willing to do so. And in such a case the "parole testimony" of the pretended master or his agent, if it seemed sufficient to the judge, was to suffice for the award of the "certificate."

If the law-making power of a popular state unconsciously plays in this way with the highest questions, then it may be inferred, *a priori*, that an evil is eating into the political, social and moral, yes, into each and all of the ways of life of the people,—an evil which leads the nation to inevitable death, unless it frees itself from it betimes with knife and hot iron.

If the whole responsibility and guilt rested upon congress, as Americans usually say and write, then all the preceding facts would be of little worth for the history of democracy in the United States. But outside of America, it is not so easy to forget that congress is not independent of the people. If the representatives of the north could voluntarily and with impunity serve the peculiar interests of the slaveholders, then the population of the north must have been, at least to a great extent, indifferent to the rights and interests of persons of color. And this is exactly the complaint which can be brought against the representatives of the north in congress. They had not yet sunk into submissive servants of the slavocracy. When, as in the compromises of the constitution concerning slavery, the political interests of the northern states, that is, of the white population of the north, were concerned, then the south always had to fight a hard fight; but when questions of humanity, questions which directly concerned only

persons of color, were reviewed, then it was allowed to carry its point almost without opposition. The moral abhorrence of slavery was at no time great enough to hinder the participation of northerners in the blackest crimes of slavery.

As early as 1785, Hopkins complained that "some New England states and other states" had again begun to import slaves from Africa. Such extraordinary prices were paid for negroes in the West Indies and some southern states, "for instance, in South Carolina," that the evil would soon be as great as before if it were not checked without delay.[1] After the adoption of the constitution, the complaint was often repeated. In 1800, Waln of Pennsylvania declared in congress that the slave-trade was carried on in great part by Rhode Island, Boston and Pennsylvania.[2] In 1804, Bard of Pennsylvania repeated the same complaint in a much sharper form.[3] And no one denied the fact, for it was too publicly known. When an attack was made in congress upon slavery, the representatives of the southern states were always ready with the sneering suggestion that the assailants should sweep in front of their own doors; and in truth, the dirtiest business connected with slavery was carried on in the north. Any excuses designed to palliate this proved reproach could be brought forward with less weight, since there were already delegates from the north who justified the slave-trade with an insolent boldness that could not be surpassed by the South Carolinians themselves.[4]

[1] Goodell, Slavery and Anti-slavery, p. 122.

[2] Deb. of Congress, II., p. 438.

[3] Deb. of Congress, III., p. 132.

[4] Brown of Rhode Island said in 1800: "He was certain that this nation having an act against the slave-trade did not prevent the exportation of a slave from Africa. He believed we might as well, therefore, enjoy that trade, as to leave it wholly to others. It was the law of that country to export those whom they held in slavery—who were as much slaves there as those who were slaves in this country—and with as

The single practical result which could be rightly deduced from the undeniable fact, was evidently the pressing necessity of struggling against it with the greatest energy. A great part of the northern representatives wished, indeed, to go as far as the constitution then allowed them. But the representatives of some of the southern states, which wished a farther importation of slaves, acted as if the north was deprived by that fact of any moral justification for acting against their wishes in this respect. They carried their point, at least so far that congress did not for a long time express, even indirectly, its disapprobation. The attempt was repeatedly made to impose a tax of $10 upon every slave imported. South Carolina's repeal of her prohibition of the importation was the main cause of this. The representatives of that state did not venture to defend this, but sought only to excuse it. Lowndes explained that the continual violation of the prohibition could not be prevented, and that it had therefore been judged better to legalize what would at any rate exist, than to accustom citizens to such a disregard of the law.[1] The rest of the members of the house of representatives were unanimous in their condemnation of the legislature of South Carolina. But yet there were manifold obstacles against giving official expression to this judgment, by voting the tax. Some affirmed that congress would thus give its sanction to the importation of slaves, and that the men engaged in the trade would at once claim its protection;

much right. The very idea of making a law against this trade which all other nations enjoyed, and which was allowed to be very profitable, was ill policy. He would further say that it was wrong when considered in a moral [!] point of view, since by the operation of the trade the very people themselves much bettered their condition. It ought to be a matter of national policy, since it would bring in a good revenue to our treasury." Deb. of Congress, II., p. 475. Rutledge expressed the same views, but even he shrank from stating them with such shameless nakedness. Ibid, II., p. 476.

[1] Deb. of Congress, III., p. 129.

others wished to draw no national revenue from such an unclean source; others contested the justice of the tax, because it would fall only upon one state; and still others affirmed that the representatives of the opposite views had almost a majority in the South Carolina legislature and that they would certainly renew the prohibition soon, if congress would but show a little patience. But the weightiest objection was that it would be malicious, unjust and imprudent to thus point out one state of the Union and to formally invite the world to condemn it. South Carolina was therefore uselessly given two years' respite before the house of representatives voted the tax of $10.[1] If the interest of the northern slave states had not in this case agreed with the wish of the north, the opposition of the minority might have even now met with scant success.

It was also due to this circumstance that in the following year the importation of slaves was completely forbidden by an unanimous vote of congress, from January 1, 1808,—in fact, from the very day from which congress had the right to forbid it.[2] No opposition was attempted, because it was recognized as bootless, and no one was willing to uselessly incur the odium. The unanimous vote is placed in the right light only by the negotiations and conclusions on the details of the question.

The struggle was next renewed in the disposition to be made of negroes smuggled into the country. According to the bill as it was submitted to the house, these were to be forfeited to the United States. The opposition to this was mainly confined to delegates from the north. Their objection was that this would be a direct recognition of slavery, since the United States would thus actually become slave-traders themselves. As the bill was framed, this could be, of course, only a technical consideration. The

[1] Jan. 22, 1806. Deb. of Congress, III., p. 391.

[2] The act was approved by the president, March 2, 1807. Stat. at L., II., pp. 426–430.

clause referred to the provisions of a certain tax law, and Pitkin of Connecticut objected that, according to this, the forfeited negroes must be sold at public auction to the highest bidder, and that at least half what they brought would flow into the treasury of the United States.[1] But Quincy was of the opinion that congress could, and, as he did not doubt, would, "devise means to make them useful members of society, without any infringement of the rights of man."[2] But if the very most zealous defenders of the slaveholding interests expressed themselves decidedly in favor of this provision, this was due not at all to any consideration for the "rights of man," but only to the supposition that the negroes would be sold as slaves.[3] The opposition was therefore justified in not yielding. But it saved thereby only a beggarly appearance. On the motion of Bidwell of Massachusetts, the disposition to be made of the smuggled negroes was left entirely to the legislatures of the different states and territories. Quincy had asked whether they were not thereby "made slaves as absolutely as by a vote of the house?"

Although this was not simply a question of policy, but one which involved a principle, the debate over it was marked by a tone of policy. The discussions concerning the punishment of the smugglers were not free, however, from the violence and bitterness which were usually shown at every mention of slavery. According to Tallmadge of Connecticut, the crime of the slave-trade should be considered as "felony." The representatives of the south opposed to the utmost the imposition of the death penalty, which was demanded by a part of the northern delegates as the only effectual means of prevention. Negative ex-

[1] Deb. of Congress, III., p. 496.

[2] Ibid, III., p. 499.

[3] Macon of North Carolina asserted that the matter was simply a "commercial question." He said: "It is in vain to talk of turning these creatures loose to cut our throats."

perience favored this view, then and thereafter; all other punishments failed to put an end to the trade. But, on the other side, it was agreed that it was probable that the threat of the death penalty would also be fruitless. It is an old teaching of experience that the effectiveness of a law which fixes penalties depends much less on the greatness of the penalty than on the certainty of its infliction. Relying on this, the opponents of the clause urged that in the southern states, which were practically alone concerned in the matter, the law would remain a dead letter.[1] These arguments were striking, but they opened a dismal vista into the future which awaited the land, if men went on treating the slavery question in the way they had up to this time. Early of Georgia said: "I should like to know how the fear of death will operate on a man who is bound with his slaves to a country where he knows the punishment will not be enforced. He will be bound to a country where the people see slaves every hour of their lives; where there is no such abhorrence of the crime of importing them, and where no man dare inform. My word for it,—I pledge it to-day and I wish it may be recollected,—no man in the southern section of the Union will dare to inform. It would cost him more than his life is worth. . . . A large majority of the people in the southern states do not consider slavery as a crime. They do not believe it immoral to hold human flesh in bondage. . . . I will tell the truth. A large majority of people in the southern states do not consider slavery as even an evil."[2] If the majority of the southern people were of this opinion and if the number of the northern politicians who prided themselves, with Brown of Rhode Island, on supporting "the rights

[1] Clay of Pennsylvania asserted that the death penalty could not be carried out, even in his state. Yet his colleagues did not fully agree with him in this, for it had been proposed by Smilie of Pennsylvania.

[2] Deb. of Congress, III., p. 501. Holland of North Carolina re-affirmed this statement in all its essential parts.

and the property" of the slaveholders, as if they were themselves slaveholders, increased;[1] then the importation of slaves was not needed in order to quickly make the Union a slavocratic republic in the full sense of the word; then there was no need of buying a single negro more in Africa, for the time must surely come when men would be declared crazy if they did not repeat the words which Sedgwick of Massachusetts (!) had used as early as 1795: "To propose an abolition of slavery in this country would be the height of madness. Here the slaves are, and here they must remain;"[2] and then the law which threatened the importer of slaves with death must become a mockery. Early had accompanied the statements already quoted with the noteworthy commentary that in the south "thinking men feared in the distant future evil, unmeasurable evil, from slavery." The hopelessness of seeing the penalty fully enforced, and unquestionably in great part also the conviction expressed by Lloyd that the punishment was out of proportion to the crime, left the advocates of the death penalty in a minority of ten votes.[3] Other causes also may have contributed to their downfall. The Union would have pronounced a peculiar judgment upon itself if it had now punished the importation of slaves with death after it had in its fundamental law expressly forbidden congress to prohibit, during twenty years, their importation. The bill in its final form condemned the importer of slaves to an imprisonment of not less than five and not more than ten years, and a fine of not less than $1,000 and not more than $10,000. Yet this measure of punishment did not especially harmonize with the confident expectation that the slave states would sell the forfeited negroes, to the advantage of their

[1] Deb. of Congress, II., p. 438.
[2] Ibid, I., p. 559.
[3] Ibid, III., p. 502.

treasuries.[1] And it scarcely harmonized with the permission to carry on the slave trade within the Union as before.[2]

[1] See Goodell, Slavery and Anti-slavery, pp. 261, 262. Attorney-General Wirt said in 1820, in an opinion on this law: "Should they have been turned loose as free men in the state? The impolicy of such a course is too palpable to find an advocate in any one who is acquainted with the condition of the slaveholding states." Opinions of the Attorneys General, I., p. 451.

[2] The senate bill had also forbidden this interior trade. The house struck out the clause, but the senate refused to agree to the amendment. A committee of conference then arranged that only the "shipping of slaves in vessels of less than forty tons, with the intention of selling them" should be forbidden. Both houses agreed to this. The clause in the senate bill was evidently within the power of congress, for the constitution gives it authority "to regulate commerce . . . among the several states." (Art. I., Sec. 8, § 3.) It is an interesting fact that Henry Clay, relying upon the same argument which the Federalists had used against him and his party in the embargo controversy, declared it to be inadmissible that the power here spoken of should be deduced from this clause. In his speech of Feb. 7, 1839, on the abolition petitions, he says: "I deny that the general government has any authority whatever from the constitution to abolish what is called the slave trade. . . . The grant in the constitution is of a power of regulation and not prohibition." (Clay, Speeches, II., p. 407.) Chief-justice Taney says in Groves vs. Slaughter: "In my judgment, the power over this subject is exclusively with the several states; and each of them has a right to decide for itself whether it will or will not allow persons of this description to be brought within its limits from another state, either for sale or for any other purpose; and also to prescribe the manner and mode in which they may be introduced and to determine their condition and treatment within their respective territories; and the action of several states upon this subject cannot be controlled by congress, either by virtue of its power to regulate commerce or by virtue of any other power conferred by the constitution of the United States." (Peters, Rep., XV., p. 508; Curtis, XIV., p. 148.) This is not, however, the judgment of the court, but only Taney's personal judgment. The striking out of the clause from the senate bill must unquestionably be considered as an indirect sanction of slavery by congress. But the bill as it was finally agreed upon and signed by the president, that is, the law, contained a very direct sanction, since it "authorized" the slave trade under certain conditions. Section 9 provides that the captain of a ship of over forty tons, who has negroes and mulattoes on board, "shall, previous to the

From a political point of view, another side of the slavery question, which had already been a subject of debate for some years, but had hitherto attracted comparatively little attention, was infinitely more important than the methods of punishing importers of slaves. Mason's declaration in the Philadelphia convention that the west was beginning to wish for slaves, in order to cultivate its boundless stretches of land, had found its justification. Since 1802, the territory of Indiana had been working upon congress to induce it to suspend for a term of years the prohibition imposed by the ordinance of 1787. At first the request was unconditionally rejected. Later, however, it was favorably reported upon by different committees of both houses of congress. But it got no farther, before the opponents of the request gained the upper hand in the territory itself. Yet for full five years it remained an open question, despite the ordinance of 1787, whether the northwest would be saved to free labor.[1]

As early as 1798, the question had been decided in favor of slavery for the Mississippi territory. In March of that year, the house of representatives took under consideration the organization of the territorial government. It had been moved that the ordinance of 1787 should be allowed to come into force there also, with the single exception of the prohibition of slavery. Thatcher of Massachusetts, the most determined champion of freedom on every occasion, wished to strike out this excepting clause.[2] He, as well as Gallatin, expressly claimed for congress the power of for-

departure of such ship or vessel, make out and subscribe duplicate manifests of every such negro, mulatto or person of color . . . and shall deliver such manifests to the collector of the port . . . whereupon the said collector or surveyor shall certify . . . with a permit . . . and authorizing him to proceed to the port of his destination."

[1] Compare Deb. of Congress, III., pp. 383, 406, 503, 519, 550, 551. For the later attempts to introduce slavery into Illinois, see Ford, History of Illinois, p. 50, seq.

[2] Deb. of Congress, II., p. 221

bidding slavery in all the territories.[1] Not a single voice was raised against the justice of this claim, and it was just as little urged that the conditions on which Georgia had ceded the territory forbade the exercise of the power in this especial case.[2] Only reasons of expediency and equity were made use of against Thatcher's proposition. Nicholas affirmed that it was not the part of congress to try to make one part of the Union happier than the other. He said that the south should not be made to bear the evil of slavery alone, but that the possibility of arriving at a general emancipation by scattering its slaves over wider stretches of country should be offered it. Despite the untenableness of these objections, Thatcher's proposition received only twelve votes.[3]

These "signs of the times" were not wholly without effect upon the north. Here and there was a person who understood how to read them in their full meaning, and they kept awake in a strong minority the old jealousy and the old distrust of the south. But only a very few recognized the fact that the slavery question was the pivot about

[1] Deb. of Congress, II., p. 223.

[2] For the first time in 1808, Bibb and Troup claimed, on another occasion, that congress did not have the right to alter the conditions accepted by the earlier congress without the consent of Georgia. (Deb. of Congress, IV., pp. 42, 44, 46. Compare also p. 324.) Poindexter, a delegate from the territory of Mississippi, urged in opposition to this: "It was decided at the last session by both houses that the United States had a right to rule the territory without the consent of Georgia. The constitution of the United States says that congress shall 'have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' Can an argument arising from the exercise of this power supersede the right of exercising the power expressly delegated by the constitution itself? Certainly not." (Deb. of Congress, IV., p. 43.) Yet only seven months later, Poindexter defended the claim made by Bibb and Troup. (Ibid, IV., p. 141.) This is one of many instances of the way in which not only arguments but convictions have been "cheap as blackberries" among distinguished American politicians.

[3] Deb. of Congress, II., p. 224.

which the fate of the Union would revolve for decades. The prohibition of the importation of slaves completely lulled to sleep the fears in regard to this, which had occasionally appeared with fitting vigor. Men congratulated themselves that they were again leading the world on the way of freedom and true humanity, and then they turned more indifferently and more thoughtlessly every day from the real question, for they honestly thought that they had bound up the arteries of the institution, and that they might therefore trouble themselves no more about it.[1] Since 1794 one anti-slavery society after another had given up its activity.[2] And those who worked on indefatigably henceforth had often to bitterly complain that they no longer found in the public any sympathy with their efforts.[3] For a full decade, slavery could grow in breadth and depth without any opposition worth speaking of. There was only a rare mention of it now, either in the press or in the debates of congress, and then mostly in an indifferent way. All sorts of questions had to be treated which were in the closest connection with it and some of which sprang directly from it, but one had to go back laboriously to their inception, in order to find out this hidden interconnection. The slaveholding interest knit mesh after mesh in the net in which it sought to entangle the Union, but men did not or would not see this. It was permitted to conceal its real

[1] "Owing to this mistaken expectation of the act of 1808 [1807] abolishing the slave trade, the attention of philanthropists was in a great measure withdrawn from the subject of slavery for ten years or more." May, Some Recollections of our Anti-slavery Conflict, p. 6.

[2] In 1833, the abolition society of Pennsylvania complained that "since that time we have seen one after another discontinue its labors until we were left almost alone." Wilson, I., p. 125, and elsewhere. Compare Clay, Speeches, II., p. 400.

[3] In 1809, the same society complained that "hitherto the approving voice of the community and the liberal interpretation of the laws have smoothed the path of duty and promoted a satisfactory issue to our humane exertions. At present, however, the sentiments of our fellow-citizens and the decisions of our courts are less auspicious."

aims, and even when it scorned to do this, no obstacles were laid in its way. The embers left by the earlier struggles seemed glimmering into nothingness. Men covered them up, but not with ashes,—with materials that kept the fire down, but made it burn with so much the greater heat.

If the prohibition of the importation of slaves had been the only or even the main reason of this apathy, the latter could not have long continued. The slave trade was a too enticing business to be completely given up, as long as no examples whatever were made of offenders against the law which forbade it. Yet the federal government did nothing to suppress it and the importation therefore quickly assumed greater proportions. Ignorance could not be pleaded as an excuse, for there were certain magistrates who kept a watchful eye on the evil and conscientiously informed the administration. But their reports remained unconsidered.[1] The regular station for slaveships at Amelia Island was of course finally broken up, but there was no interference until the evil had become altogether too great. The lawless folk settled there were engaged, besides, in smuggling and in mischief of every sort. It remains therefore an open question, how far their dispersion is to be ascribed to the aid which they gave the slaveholders.[2] The prior conduct of the executive as well as of congress does not favor the view that the main reason of the interference is to be sought just in this. As early as 1813, the Pennsylvania anti-slavery society had called the attention of congress to the fact that American ships were

[1] Jay, Misc, Writ., p. 278, seq., gives a number of verbatim extracts from such reports.

[2] Monroe says, in his message of Dec. 2, 1817: "The island [was] made a channel for the illicit introduction of slaves from Africa into the United States, an asylum for fugitive slaves from the neighboring states [!] and a port for smuggling of every kind." States. Man., I., pp. 398, 399. Compare the message of Jan. 4, 1818; Deb. of Congress, VI., p. 19 and Niles' Reg., II., p. 93; X., p. 400; XIII., pp. 12, 28, 47, 62, 78, 221, 296; XIV., p. 100.

engaged in the slave trade under foreign flags.[1] Congress referred the memorial to a committee and the slave-traders went on with their business. By degrees the trade was pursued with such impudent boldness that wider circles began to shake off the lethargy. Anti-slavery petitions were again presented to congress, and especially after 1818, in greater numbers than ever. From the midst of the supreme court of the United States came the complaint that the crime was not checked, although the president had been authorized to use ships of war for that purpose.[2] Joseph Story, one of the greatest ornaments as a man and as a judge of the highest court of the Union, repeatedly exhibited to the grand jury of his circuit, and thereby to the whole nation, the horrible picture of facts which lay behind the veil of the stringent penal law.[3] In congress itself, it was not denied that there was cause for the complaints. Southern members estimated the number of negroes smuggled into the country every year at from thirteen thousand to fifteen thousand. But in the same year the registrar of the treasury officially informed congress that the records of the department did not show a

[1] Deb. of Congress, IV., pp. 7, 14. See also Niles' Reg., V., p. 334. Since Spain and Portugal still allowed the slave trade, the flags of these two powers were especially used.

[2] Law of March 3, 1819. Stat. at L., III., p. 532.

[3] In one of these warnings (1819) it is declared: "We have but too many melancholy proofs from unquestionable sources, that it [the slave trade] is still carried on with all the implacable ferocity and insatiable rapacity of former times. Avarice has grown more subtle in its evasions; it watches and seizes its prey with an appetite quickened rather than suppressed by its guilty vigils. American citizens are steeped up to their very mouths (I scarcely use too bold a figure) in this stream of iniquity. They throng to the coasts of Africa, under the stained flags of Spain and Portugal, sometimes selling abroad their 'cargoes of despair' and sometimes bringing them into some of our southern ports, and there, under the forms of the law, defeating the purposes of the law itself, and legalizing their inhuman, but profitable, adventures. I wish I could say that New England and New England men were free from this deep pollution." Life and Letters of J. Story, I., p. 340.

single forfeiture under the law of 1807.[1] In view of these facts, the assertion that the federal government honestly and to the full extent of its power tried to enforce the law, is laughable. As long as it was unwilling to do so, each added vigor of the penal laws only served still more to throw dust in the eyes of the nation and of the world in regard to the true state of things. If the suspicion that the federal government willfully did this was not justified, it was nevertheless near the truth.

In the tenth article of the treaty of Ghent, England and the United States pledged themselves to their "best endeavors" to bring about the "entire abolition" of the slave trade, because it was "irreconcilable with the principles of humanity and justice."[2] Taking this article as a basis, Senator Burrill of Rhode Island moved, in January, 1818, the appointment of a committee for the consideration of the question whether it was advisable to enter into treaties with other powers in order to attain this end. The motion was adopted by a majority of one.[3] But the minority, which made great use of Washington's warning against "entangling alliances," finally carried its point. The advances of England in the following year received no attention. Congress gave satisfaction to public opinion and its own conscience, when, about a year later, it declared the slave trade to be piracy.[4] How far the enforcement of

[1] Jay, Misc. Writ., p. 281.

[2] Stat. at Large, VIII., p. 223.

[3] See the debate in Deb. of Congress, VI., pp. 11–19.

[4] Law of May 15, 1820. Stat. at L., III., p. 600. Magrath, United States judge for the district of South Carolina, decided, in The United States vs. Corrie, that only the individual crimes enumerated in the law were piracy, and that the slave trade was not. Kent's Comm., I., p. 196. When England, in 1823, again entered into negotiations, the United States made it a condition of united effort, that the slave trade should be declared piracy by international law. It is possible to be of the opinion that too much was asked for the sake of obtaining nothing, for, according to the English law, the slave trade was not piracy. Yet par-

this law was to be expected could be inferred from the fact that courts,[1] congress,[2] and president[3] had refrained from enforcing the earlier and milder law whenever the opportunity of making an example under it was offered them.

The zeal with which congress continued to increase the severity of the laws against the slave trade from 1807 on, was connected with another question, which contributed greatly to the strengthening of the slaveholding influence. If, in earlier times, the further importation of slaves had been contrary to the interest of northern slave states, this was now still more the case. This fact alone preserved their representatives from the accusation that they were playing parts in a treacherous comedy by voting for the

liament passed an act to that effect, and a treaty signed at London, March 13, 1824, was sent to Washington for ratification. The senate, after long delays, and only when urged by the president, decided the question, but first mutilated the treaty to such an extent that it was made entirely worthless. England rejected it in this form, but did not cease from her efforts until Henry Clay, at that time secretary of state, expressed the opinion that it "appears unnecessary and impolitic to continue the negotiations."

[1] The collector of Mobile advised the secretary of the treasury, November 15, 1818, that three slave ships had been seized, "but this was owing rather to accident than any well-timed arrangement to prevent the trade." And in a later letter, he says: "The grand jury found true bills against the owners of the vessels, masters and supercargos, all of whom have been discharged, why or wherefore I cannot say, except that it could not be for want of proof against them." Jay, Misc. Writ., p. 281.

[2] In April, 1820, the house of representatives released to three persons the fine imposed on them for importing slaves, so far as the United States were competent to do so under the laws. The pretense for this was that these were house servants, and the violators of the law had been assured upon inquiry of an American consul that such slaves could be imported. Deb. of Congress, VI., pp. 573, 574.

[3] A slave trader by the name of Lacoste was condemned in Boston in 1820 to three years imprisonment and three thousand dollars fine. Monroe gave him a full pardon at the beginning of 1822, although the slave trade had in the meantime been declared to be piracy. Niles' Reg., XXII., p. 114.

laws supplementing the act of 1807. But the considerations brought forward at that time against the imposition of the death penalty would now have had still greater weight with them, if they had not had reason just at this moment to act as if they had resolved in sober earnest to take some thorough steps towards a radical and comprehensive struggle against the evil. In January, 1817, Randolph laid before the house of representatives a petition of the "colonization society," founded at Washington, December 28, 1816,[1] which asked congress to aid its plan for colonizing free negroes in some part of Africa.[2] The plan of organizing such a society had originated in Virginia, and its first beginnings dated back to the time of the revolution. Early in the 19th century, it began by degrees to obtain a more fixed form.[3] The cause of this was the growing fear of slave insurrections which might be excited by free negroes.[4] A considerate reception had already been assured to the petition by the fact that a number of the first men of the slave states were among the founders of the society,[5] and the legislature of Virginia had passed, a short time before, a formal resolution, with the same object in view.[6] In the house of representatives the request was referred at the suggestion of Randolph to a committee, which submitted a report February 11.[7] The committee did not

[1] Niles' Reg., XI., p. 296.

[2] Ibid, XI., p. 355.

[3] See Jefferson's Works, IV., pp. 419–422, 442–444; V., pp. 563–565.

[4] Such fears had been entertained even before the close of the 18th century. See Gibbs, Mem. of Wol., I., pp. 482, 486, 496; Jeff., Works, IV., pp. 196, 422. Randolph said in a speech of Dec. 10, 1811: "Within the last ten years, repeated alarms of insurrection among the slaves; some of them awful indeed. . . I speak from facts when I say that the night-bell never tolls for fire in Richmond that the mother does not hug the infant more closely to her bosom." Garland, Life of J. Randolph, I., pp. 294, 295.

[5] Bushrod Washington, Henry Clay, John Randolph, R. Wright, etc.

[6] Niles' Reg., XI., p. 275.

[7] The report is printed in Niles' Reg., XII., p. 103.

consider it proper that the house should at once pass final resolutions, but recommended that the president should be authorized "to consult and negotiate" with all foreign powers for the "entire and immediate abolition of the traffic in slaves; and also to enter into a convention with the government of Great Britain for receiving into the colony of Sierra Leone such of the free people of color of the United States as, with their own consent, shall be carried thither." This double recommendation met with the full approval of the colonization society.[1] Yet the house came to no definite conclusion. At the next session the question again came under consideration. By a law of March 3, 1819, against the slave trade, the president was empowered to issue the necessary orders for transporting illegally imported negroes back to Africa.[2] This decision was recognized as an approval of the colonization plan, and was therefore very helpful to the society. Besides this, the latter got a considerable money subsidy from the treasury of the Union; for Monroe, who had been in favor of the plan since the beginning of the century, construed the law just mentioned in a way that was more than liberal. The government was far removed from making the cause of the society its own, but it showed such an interest in it that the propagandism among northern philanthropists was thereby powerfully aided.

Both the petition of the society, in which it explained its aims, and its constitution were framed in the most discreet way. It did not pretend to labor for the abolition of slavery. The press emphatically declared that such an aim would be wholly foreign to it, even in the most distant future.[3] The only notice taken of the slaves in the petition

[1] See its address, Niles' Reg., XVI., p. 65.

[2] Stat. at Large, III., p. 533.

[3] "It is scarcely necessary to add that all connection of this proposition with the emancipation of slaves, present or future, is explicitly disclaimed." Niles' Reg., XI., p. 296.

was to argue that emancipation was hindered by the increase in the number of free negroes then resident in the country. But "humanity" was rung in with such dexterity, in the statement of the motives and views of the originators of the plan, that the north was actually of the opinion that here a way had been found by which the nation could gradually rid itself of slavery. It was thought that the process would be in this wise: By the departure of the free negroes, the weightiest objections of humane slaveholders against freeing their slaves would be removed, and emancipation and the transportation of the emancipated would thenceforth keep pace with one another until the United States would be completely rid of their colored population. But in this reckoning no account whatever was taken of the true disposition of the slaveholders. Even Jefferson now began to doubt the illusions concerning slavery, which he had all his life entertained.[1] But under all circumstances, the plan would have been an absurdity. This was so plain that even from the first instant there were persons who gave the proof of it in sober facts and figures.[2] The number of slaves was already much more than a million. Even if all the emancipated ones would consent to be transported,[3] and if as many slaves were freed every year as could be transported and colonized, yet the growth of the slaves through natural increase must constantly far exceed their decrease by colonization.[4]

[1] Jeff., Works, VII., p. 58.

[2] See the article in Niles' Reg., XIII., pp. 82, 177.

[3] It had been expressly guaranteed that their voluntary consent should be obtained.

[4] Up to the eighteenth year of the existence of the society (Jan. 1, 1835) eight hundred and nine emancipated slaves had been taken to Africa, a number which equals the natural growth of the slave population in five and a half days. (Jay, Misc. Writ., p. 80.) It is easy to see from this what would have been accomplished in the course of the "century" within which the society promised to rid the country of all its negroes. African Repository, I., p. 217; IV., p. 344; and elsewhere.

But figures prove nothing to a man who will not be convinced. A more kindly and humane way to get rid of the terrible evil could not be easily devised, and therefore men believed in the possibility of the plan.

The slave states in which the project originated indulged in no illusions. They knew exactly what they wished and laughed in their sleeve at seeing the philanthropists of the north fall so readily into the trap.[1] A bait thrown out by the founders of the society was the gaining of Africa to the Christian religion and western civilization by means of the settlement of the negroes there. But yet they seized every opportunity to brand free colored persons as the refuse of the population, whose departure could not be too dearly bought by any sacrifice.[2] At the same time, the colonization society protested that its object was not in any sense the elevation of free persons of color.[3] What its "humanity" was, is clearly shown by this, and its true aims, too, could be inferred from this without difficulty. Moreover, it made no secret of them. Randolph had de-

[1] It is certain that there were victims among the victimizers. The brutal energy with which the "voluntary consent" of the free negroes to their transportation was wrung from them is proof of this. See, on this point, Jay, Misc. Writ., pp. 50–58. A Florida slaveholder wrote in a book entitled A Treatise on the Patriarchal System of Society: "Colonization in Africa has been proposed to the free colored people, to forward which, a general system of persecution against them, upheld from the pulpit, has been legalized throughout the southern states."

[2] On one page of a speech delivered by Henry Clay, in 1827, are the following sentences: "They will carry back to their native soil the rich fruits of religion, civilization, law and liberty. . . Of all classes of our population, the most vicious is that of the free colored. . . Every emigrant to Africa is a missionary carrying with him credentials in the holy cause of civilization, religion and free institutions." (Speeches, I., p. 282.) This is an example of the logic of slavocratic Democrats. See Wilson, The Rise and Fall of the Slave Power in America, I., p. 213; Jay, Misc. Writ., pp. 22–24.

[3] The society said, in one of its addresses: "The moral, intellectual and political improvement of free people of color within the United States are objects foreign to the power of the society."

clared, in the first meeting for the organization of the society, that it "must tend essentially to make slave property safe." With every year, not only did this show itself more plainly, but it was also roundly stated that the society's true aim was in fact the purification of the land from the pest of the free colored population in order to give increased security to slavery.[1] The time came when men of the north who could not entertain the idea of a compromise between slavery and freedom, laid the hypocrisy and falsehood of the colonization plan so naked in the light of day that it could scarcely claim the dignity of a farcical interlude in the terrible tragedy, which hastened with giant steps towards its issue. But for a long time the upright philanthropists and friends of freedom in the north were lured on false paths. It was this and not the number—scarcely worth mentioning—of free negroes who were taken over to Africa, which made the colonization swindle of such priceless worth to the slavocracy. Such a piece of Don Quixoterie has never been indulged in, in more bitter earnest, and especially by such men. It would not have been possible if political thought had not already begun severely to feel the baleful influence of slavery.

While law after law was passed against the African slave trade, and no words could be found which condemned it sharply enough, the interior slave trade constantly as-

[1] Clay denied this, but in the same speech he said: "Any project . . . by which, in a material degree, the dangerous element in the general mass can be diminished or rendered stationary, deserves deliberate consideration," and "the execution of its [the society's] scheme would augment instead of diminishing the value of the property [that is, the slaves] left behind." Speeches, I., pp. 275, 283. Webster himself said in his notorious speech of March 7, 1850: "If Virginia and the south see fit to adopt any proposition to relieve themselves from the free people of color among them, or such as may be made free, they have my full consent that the government shall pay them any sum out of the proceeds of that cession [the western territory] which may be adequate to the purpose." Webster, Works, V., p. 364.

sumed greater dimensions and a more shocking form. And a centre of this trade was the capital of the country. Not in the darkness of night and against the law did the traders conduct their business. They paid out their blood-money for permission to carry on their trade; the papers were filled with their advertisements; and from the windows of the capital long trains of fettered slaves on their way to the sugar and cotton plantations of the south could be seen. And behind those windows the white men of the republic spoke oracularly of the rights of man and of freedom. The scene was so disgraceful that a Virginian—a slaveholder, whose body quivered with rage when he thought he saw the slightest attempt to infringe upon the "rights" of the slaveholders—held up the shame before the eyes of congress in words of thunder. John Randolph's long finger, the terror of all the little and sinful spirits in the house of representatives, was pointed, not at a single victim, but at all congress, and it might have been thought that he wished to let his shrill voice scream his words into the conscience of the whole country when, on March 1, 1816, he moved, after a scathing philippic, the appointment of a committee which should inquire whether "the inhuman and illegal traffic in slaves" was carried on in the district, and report whether any, and if so, what means could be used to put a stop to it.[1] No one ventured to refuse the demand. Randolph himself was named chairman of the committee. His report contained a crowd of facts which justified only too fully his complaints; but he submitted no resolution, and the whole thing, like all earlier complaints against slavery, was simply placed upon

[1] Deb. of Congress. V., p. 609. This haughtiest of the slave-barons, who declared that he "would never weaken the form of the contract between the owner and the slave," asserted: "It is not necessary that we should have, here in the very streets of our new metropolis, a depot for this nefarious traffic, in comparison with which the traffic from Africa to Charleston or Jamaica was mercy—was virtue."

record. The tragic comedy was the richer for one scene, and that by no means the worst.

When it was to the interest of the slaveholders to take an active part, men were not satisfied with fruitless resolutions. In the first article of the treaty of Ghent, slaves were enumerated among the things which were to be restored. During the fulfillment of the treaty a strife arose over the question whether only the slaves found in the places occupied by the English, or also those who had fled to their ships or their armies, were to be understood as comprised under this provision. The Americans claimed all these slaves, while the English would deliver up only the first-named class. Negotiations on this point were carried on for twelve years. By its incomparable tenacity the American government wrung from three conventions a decision, the final result of which was the payment of $1,204,000. The owners of the escaped slaves made a good profit out of this. After they had received the settled average value of the runaways, with twelve years' interest, there still remained a surplus, which was also shared among them. It is not easy to see how the federal government could more clearly recognize the slaves as property which, like all other property, must be protected by the whole power of the Union. But yet the old principle that slavery was only a municipal institution, of which the Union, as such, knew nothing, was adhered to.

A long time before this matter was settled the government had employed the armed power of the Union in Florida in the interest of the slaveholders. The abolitionists afterwards often asserted in their zeal that the contests of many years' duration which were here fought were only a slave-hunt, and that the final acquisition of the territory was only for the sake of increasing the domains of slavery. The assertion is as little justified in this case as in that of Louisiana. From the beginning of the century the United States had eyed the Floridas with

a longing due to political and very cogent reasons. In consequence of the violation of rights guaranteed to the United States in New Orleans the house of representatives appointed a committee in 1803 to prepare a report on the propriety and possibility of annexing Florida. This committee came to the conclusion that "New Orleans and the Floridas must become a part of the United States, either by purchase or by conquest."[1] This report was followed by no practical result, until, on account of European troubles, Spanish embarrassments offered a favorable opportunity therefor. A resolution and act of Jan. 15, 1811, empowered the president "under certain contingencies" and "with a due regard to the safety" of the United States, to take "temporary" possession of the territory east of Perdido and south of Georgia.[2] In accordance with this act, Madison had West Florida occupied. His secretary of state, Monroe, in response to the "solemn protest" of the English ambassador against this step, justified it by asserting that West Florida belonged to the Louisiana territory ceded by France, but at the same time took the ground that the demands for indemnification which the United States had against Spain were a sufficient justification of the occupation.[3] These claims had to serve, afterwards, as a justification for the attack upon East Florida.[4] In the following year the territory as far as Pearl river was formally united with Louisiana, and that from Pearl river to Perdido with the Mississippi territory. The house of representatives wished to also authorize the president to take possession of East Florida, but the senate rejected the bill on account of the critical condition of the country. During the war with England Mobile also fell into the hands of the Americans, and the possession

[1] Niles' Reg., III., p. 52.
[2] Statutes at Large, III., p. 471.
[3] See the correspondence in Niles' Reg., I., pp. 187–189.
[4] Niles' Reg., I., pp. 189, 190.

of West Florida was thereby completely assured to them; but, on the other hand, they had to evacuate East Florida. All these steps, as well as the temporary occupation of Pensacola by Jackson, had no connection whatever with the slavery question. The latter was considered for a long time only as an interest pertaining peculiarly to Georgia and scarcely worth notice. And it was not until after the end of the war that it was brought into prominence by a curious occurrence.

In November, 1812, a committee of the legislature of Georgia expressed its views very freely concerning the action of the federal senate in refusing its approval to the bill of the house of representatives, which authorized the president to occupy East Florida. The committee considered this policy "inexplicable" and "subversive of the safety and tranquillity of this section of the United States."[1] These words contained the clue to the peculiar interest which Georgia had in the question. For a long time, the fugitive slaves of Georgia found an asylum among the Indians of Florida. This "evil" was so severely felt that the state was constantly urging upon the federal government, that it should redress it by acquiring the territory. The complaints were not without effect. Secretary of war Crawford ordered general Jackson, March 15, 1816, to notify the commandant at Pensacola of the fact that a fort which had been built at Appalachicola, during the war, by the Englishman Nichols, was occupied by Indians and negroes, who enticed slaves to flee from the territory of the United States. If the commandant refused to interfere, then the fort was to be seized, provided this could be done without the authorization of congress. Before the command reached Jackson, he had already, on his own responsibility, sent general Gaines against the fort, with the orders "to advise the governor of Pensacola of your [his] inroad

[1] Niles' Reg., III., p. 259.

into the territory, and with its expressed object, to destroy these lawless banditti." Gaines charged Colonel Clinch with the execution of the command. The latter took some gunboats with him. During the bombardment, which was preceded, as Clinch affirmed in his dispatches, by an attack from the negroes, a red-hot ball flew into the powder magazine. Of the three hundred negroes and about twenty Indians, who, according to the official report, were in the fort, two hundred and seventy were instantly killed by the explosion, and the rest were mortally wounded.[1] This "heroic deed," which was rewarded by congress in 1818, upon the motion of Pleasant of Virginia, with a grant of $5,465, was the beginning of the Seminole war, which cost the United States millions on millions and perhaps surpassed all other Indian wars in ferocity. And the object of the campaign which ended in this heroic deed was, according to the official records, the destruction of the refuge of fugitive slaves and the return of the fugitives to their rightful owners. The troops of the Union were degraded into slave-hunters; the victor of New Orleans and the future president of the republic had stooped to this; and congress crowned the glorious transaction by voting a reward. In the heated debates which the Seminole war excited, men shunned going back to its first cause, although the hunt for slaves continued to play a leading part in it. Only one Pennsylvanian betrayed, in an unguarded moment, how deeply slavery was entangled in the struggle, and he defended the man-hunting.[2] For the rest, men quarreled over the question whether the war had been begun by the Indians, or whether the latter had first had reason to complain of the injustice of the whites.

[1] The records of these occurrences are in the fourth volume of the State Papers, XIX. Cong., 2d Sess. An interesting report is to be found in Niles, XI., p. 37.

[2] Baldwin, Deb. of Congress, VI., p. 322.

So the last[1] of the long series of games which had been played during the first thirty years of the Union under the new constitution, on the white and black chess-board of free labor and slavery, was of a bloody character. The stakes had been high enough, and the north had lost them all. Even for its half-victory in the question of slave importation, it had to thank its league with the northern slave states. It would have been contrary to human nature if the south had not, after these successes, played the game with doubled assurance, and, where possible, for doubled stakes. The stake and the hardihood of the play increased in the same ratio, as slavery swallowed up in the south all other interests and came to be the one interest on which all others were dependent.

[1] I call it the last, because it had the most widespread influence in the following period.

CHAPTER IX.

The Economic Contrast between the Free and Slave States. The Missouri Compromise.

From the instant that slavery was brought into connection with the constitution, the south had shown a feverish irritation as soon as the "peculiar institution" was made a theme of discussion in any way whatever. A great part of the questions it called forth had been settled only after long and heated struggles. And during these struggles many a word had fallen on both sides which lifted with terrible certainty the veil of the future. But yet all the contests over the slavery question, with the exception of the debates in the Philadelphia convention, had been, so to speak, mere incidents. They constituted only one element of the regular political order of the day. "South" and "North," spoken in tones pregnant with meaning, soon became among the most frequent expressions of politicians. But "slaveholding" and "free" states had not yet become political catch-words. When they had become such, and when they became, as they did every day, more and more the keynote in all debates, fractional parties were formed on both sides, but especially in the north, which, appealing to the olden time, protested against this with increasing violence. Even since the end of the civil war, thick books have been written to prove that the slaveholding and free states might have peaceably got along with one another till the end of time, if on this side and that, political short-sightedness, fanaticism, and demagogism had not awakened discord and artfully kept it alive. The whole history of the Union since 1787 so clearly contradicts this view that it can be attrib-

uted only to moral enervation. Luther and his opponents could have more easily remained true to their argument, and by keeping silent, have set a limit to the reformation already begun, than the contest in the United States between the free and the slaveholding states could be kept, by simply not noticing it, from growing more violent every day until it finally culminated in an incurable breach. Even if this mutual opposition had been only a moral and political one, there was no possibility of mediation or reconciliation between them because it was a question of principle. But, besides this, it was also of an industrial nature and was therefore of greater signification, since it necessarily influenced practical politics earlier and more directly.

Free labor, with unlimited competition, makes the highest development and the highest employment of individual power the formative principle of the collective life of a nation. On the contrary, the only means of industrial advancement with slave labor is the increase of the weight of the dead mass. The essence of free labor is intensity; the condition of existence for a slavocracy competing with free labor is boundless expansion.[1] Moreover and above all, in the United States, expansion was offered to the free north

[1] During the last five years before the outbreak of the civil war, the leading statesmen of the south not only admitted this, but used it as an argument for the justice of their new demands. Robert Toombs declared, Jan. 24, 1856, in a speech at Boston: "Expansion is as necessary to the increased comforts of the slave as to the prosperity of the master." But Barringer of North Carolina laid the most open statement before the peace convention of 1861. He said: "In my opinion you will never get back the seceded states, without you give them some hope of the acquisition of future territory. They know that when slavery is gathered into a *cul de sac*, and surrounded by a wall of free states, it is destroyed. Slavery must have expansion. It must expand by the acquisition of territory which now we do not own. The seceded states will never yield this point—will never come back to a government which gives no chance for the expansion of their principal institution." Chittenden's Report, p. 340.

in a high degree, and intensity of labor could therefore come into play only upon one side, and that the quantitative one. The final result in the struggle between the opposing industrial principles would not, however, be thereby changed.

The industrial development of the slave states soon fell far behind that of the north, because this development on account of slavery continued to be thoroughly one-sided. The south remained essentially limited to agriculture, and this could be carried on only on a large scale, while the condition precedent of *intense* agricultural industry is the predominance of the small and middle-sized farm. But slavery has an invincible tendency in favor of plantation industry, which suppresses or swallows small farms.[1]

[1] According to the census of 1850 (Compend., p. 170), in the southwest the average size of landed properties, including the farms and the so-called "patches" of the cottagers who owned a few slaves, was two hundred and seventy-three acres. Cotton plantations were seldom less than four hundred acres. According to De Bow, the first class of slaveholders, those owning from fifty slaves up, altogether numbered in all the slave states only seven thousand nine hundred and twenty-nine. The majority of the cotton planters, who owned from ten to twenty-five slaves, lived, according to Olmstead, in great indigence (The Cotton Kingdom, I., p. 18. Compare also, II., p. 233). De Bow—an authority who cannot well be doubted when the misfortunes of the slave states are the subject of discussion—writes: "But what would be his [the hearer's] surprise, when told that so far from living in palaces, many of these [cotton] planters dwell in habitations of the most primitive construction, and these so inartificially built as to be incapable of defending the inmates from the winds and rains of heaven; that instead of any artistical improvement, this rude dwelling was surrounded by cotton-fields, or probably by fields exhausted, washed into gullies and abandoned." Resources of the South and West, II., p. 113. The same authority writes: "I am satisfied that the non-slaveholders far outnumber the slaveholders, perhaps by three to one. In the more southern portion of this region [the southwest], the non-slaveholders possess generally but very small means, and the land which they possess is almost universally poor, and so sterile that a scanty subsistence is all that can be derived from its cultivation, and the more fertile soil, being in the hands of the slaveholders, must ever remain out of the power of those who have none." II., p. 106.

The great planter gave the tone to industrial life. He abandoned himself, in great part, to the finer enjoyments of life, leaving the control of the plantation to the overseer, who, as a rule, paid attention only to the greatness of the crop, since this was usually looked upon as a measure of his capacity and served also as the measure of his remuneration. In most cases the soil was systematically exhausted. The surplus yield was laid out when necessary in new lands, but especially in new slaves; for wealth was estimated according to the number of slaves, and social position depended, in certain respects, upon this also. The price of slaves rose more quickly than their value. He who had fewest slaves suffered most on this account, as well as from the lack of means of exchange. His labor power was only sufficient to wring from the ground what was needed for the acquisition of the barest necessaries. There was no spur to emulation, for the great planter stood too far above him, and a moderate advance brought with it no increase of the enjoyments of life which could exercise a marked influence upon him. If he was especially industrious, and if fortune smiled upon him, he aped the large planter and like him devoted his savings to the purchase of new slaves. Production was increased without any increase in comfort. What was considered as the growth of wealth was really, in great part, only an increase of the laboring population, together with an increasing destruction of capital. The south lived almost exclusively by agriculture, and with every decade the price of land fell farther behind its price in the north, a country much less richly endowed by nature.[1]

[1] According to the census of 1850 the average price of an acre in Virginia was $8, and in Pennsylvania, her next-door neighbor, $25. The same remarkable difference in price appeared in the slave states themselves, where, in different sections, the proportion between the slaves and the free population was notably different. Thus Olmstead found that the price of an acre in the northwestern portions of Virginia,

And recompense for this in other branches of industry was utterly lacking. Manufacturing on a great scale found no footing in the peculiarly slave states, and could find none.[1] The capital of the section was monopolized by agriculture. Manufacturing industry did not accord with the longing for aristocratic leisure which must characterize the free population in a community which owes its specific industrial character to slave labor. The natural resources of the section had to offer quite extraordinary advantages to foreign capital before the latter would venture to try to overcome the difficulties which an industrial system founded on slavery laid in the way of every great industrial undertaking. Skilled labor was more difficult to get there than anywhere else. The slaves could not be trained to it. Since they did not enjoy the fruits of their labor they labored only under the impulse of fear. The constant conscientious watchfulness which is the first requisite for a successful factory-hand could not be got under the lash. There was, indeed, no lack of free workmen, but in every respect they were far behind the workmen of the free states. The demoralizing influence of the scorn entertained for labor showed itself especially up-

where the proportion was 1: 15, was above $7.75, and in the other counties, where the proportion was 1: 2 2-10, was only $4.50. The Cotton Kingdom, I., p. 114.

[1] Other conditions being the same, the manufacture of a raw material will always be carried on in the neighborhood where the material is produced. The tendency of both sections to the development of manufactures can best be compared in the case of the cotton manufacture. According to the report submitted June 30, 1855, by R. C. Morgan and A. Shannon to the secretary of the treasury, this represented, in 1820, in the slave states, a value of $885,608, and in the free states of $4,048,549; in 1860 it had reached in the slave states $9,367, 331, and in the free states $52,501,853. All the manufactures of the south represented, in 1850, the value of $93,362,202, and those of the north $347,748,612. Kettell, Southern Wealth and Northern Profits, p. 55. The number of persons engaged in manufacturing was, according to the census of 1850, in the slave states 151,944, and in the free states 807,125.

on them. Moreover, the independent artisan, whose work forms the natural basis of a healthy general industry, had only a precarious existence in the slave states. The possibility and necessity of a division of labor stand in a certain relation to the density of population.[1] It was there-

[1] At the end of the revolutionary war the population of the southern states was about 1,600,000 souls. Their area was 128,000,000 acres. There were therefore about eighty acres per head. By 1860 the population of the slave states had increased to 12,000,000, and their territory embraced nearly 540,000,000 acres, about forty-five acres per head. While the population had increased in the proportion of 1: 7.5, the area of slavery had been extended in the proportion of 1: 4.5. Carey (The Slave Trade, Domestic and Foreign, p. 99, seq.) gives a series of authorities from the slave states in support of the fact that in those states the ground was rapidly used up, and soon completely exhausted, so that the population either grew poor or had to exchange their old abandoned homes for new stretches of virgin soil. He then says (p. 102): "When . . . they [men] separate from each other the greater is the tendency to a decline in the value of land, the less is the value of labor, and the less freedom of man. Such being the case, if we desire to ascertain the ultimate cause of the existence of the domestic slave trade, it would seem to be necessary only to ascertain the cause of the exhaustion of the land." This cause is commonly and quite wrongly, he says, sought in slavery; for in the northern states "exactly the same exhaustion" [?] of the soil takes place. "It is not slavery that produces exhaustion of the soil, but exhaustion of the soil that causes slavery to continue" (p. 105). He then estimates the products of the slave states in 1850 at $300,000,000 and those of the free states at $1,250,000,000, and continues: "The difference is caused by the fact that at the north artisans have placed themselves near to the farmers, and towns and cities have grown up, and exchanges are made more readily, and the farmer is not to the same extent obliged to exhaust his land, and dispersion goes on more slowly. . . . With each step in the process of coming together at the north, men tend to become more free; whereas the dispersion of the south produces everywhere the trade in slaves of which the world complains, and which would soon cease to exist if the artisan could be brought to take his place by the side of the producer of food and cotton. . . (p. 115). Upon whom, now, must rest the responsibility for such a state of things as is here exhibited? Upon the planter. He exercises no volition. He is surrounded by coal and iron ore, but the attempt to convert them into iron has almost invariably been followed by ruin. He has vast powers of nature ready to obey his will,

fore exceedingly limited in the slave states. The market for manufactured articles outside of the few great cities had such a wide range that the needed competition unfortunately could not be built up. Not only were the consumers too widely scattered, but their absolute number was too small. The great landowners numbered only a few thousand, and their demand for luxuries could be easily and cheaply supplied by importation. The planters of the second class usually tasted according to their means the luxurious enjoyment which their rich exemplars allowed themselves, and lived, for the rest, in the self-satisfied con-

yet dare he not purchase a spindle or a loom to enable him to bring into use his now waste labor power, for such attempts at bringing the consumer to the side of the producer have almost invariably ended in the impoverishment of the projector, and the sale and dispersion of his laborers." According to Carey the blame for this falls upon England and those who, by supporting free trade tendencies, have aided her efforts to make herself the "sole workshop of the world" for all manufactured and industrial articles. Space does not allow me to make further extracts, but it is worth while to answer the reasoning of this famous politico-economist, inasmuch as this will be an excellent proof of the view developed in the text. What he wishes to prove is opposed to this. Carey wholly forgets one fact, and this one fact turns all his arguments against himself. The commercial policy of the United States has not been different for the two sections, but precisely the same for the whole country. Whether it has been good or bad, in either event under it countless towns and cities *have* grown up in the north; manufacturing and industry *have* struck root; the population *has* grown denser; "anvil and loom" *have* "taken their places beside the plough and the rake"; while all this has not happened at the south. If it "could" not happen at the south, as Carey—and rightly indeed—affirms; if all attempts to bring it about ended with the ruin of the projector,—the reason for this must be sought elsewhere. But this reason can be found only in slavery, for slave labor and free labor was the only difference which influenced the industrial institutions and the industrial policies of the two sections. It cannot be denied that the exhaustion of the soil and the consequent "dispersion" of the population, tended to make the free whites of the south ever more and more the slaves of slavery. Cause and effect were here, as they so often are, entangled with each other in such a way that each influenced the other, so that each appeared both as a cause and as an effect.

tentment of an idle semi-civilization. The mass of the small slaveholding landowners and of the poor artisans was the most sorrowful social product which the history of civilized nations has to show, an aristocratic proletariat which, both from its lack of culture and its arrogance, was terrible material in the hands of a self-seeking aristocracy and of politicians greedy for power. Partly poverty and partly savagery allowed manufacturing industry to find no market here for anything save the most necessary tools, articles of clothing, small arms, and the whisky flask. Finally, the slaves, with the exception of the house-slaves of the wealthy, figured among the consumers of manufactured articles only as users of agricultural implements and of the coarse stuffs which served to cover their nakedness.[1]

The wholesale trade was mainly in the hands of northern merchants. In all contests with the north, the right-bower of the southern politicians was the fact that the profit yielded by the export of southern raw products to Europe and the import of European manufactured goods to the south fell to the north. As threats of secession became the staple seasoning of political debates, the taunt was continually thrown out that the shopkeeping-spirit of the north would think twice before it drove the south to separation and so deprived itself of the profit which the great-hearted south allowed it to make. Retail business languished under the conditions which held down all handicraft. Com-

[1] The Lynchburg *Virginian* said: "Dependent upon Europe and the north for almost every yard of cloth, and every coat, and boot, and hat we wear; for our axes, our scythes, tubs and buckets,—in short, for everything except our bread and meat!—it must occur to the south that if our relations with the north should ever be severed—and how soon they may be, none can know (may God avert it long!)—we would, in all the south, not be able to clothe ourselves. We could not fell our forests, plough our fields, or mow our meadows. In fact, we would be reduced to a state more abject than we are willing to look at even prospectively." Quoted by Olmsted, The Cotton Kingdom, II., p. 366.

mercial life was confined, far more than at the north, to a few places, and commerce could therefore exercise its civilizing influences only on a much smaller scale than there.[1]

The population of the slave states therefore lacked that manifold interlinking of interests which goes on developing forever in a community that rests on a moral basis. In the free states, indeed, the social extremes constantly became farther apart, but the transitions from one social stratum to the other were unnoticed and the whole community was an organism which not only grew outwardly, but was continually developing within. In the south, on the contrary, society ever became more distinctly divided into three separate classes—the ruling great land owners; the less wealthy slaveholders, who had no leisure for intensely active participation in political life and neither leisure nor inclination for self-culture; and the free rabble. The foundation of the whole structure was formed by the slaves, who had no social standing.[2] Of course there was no lack of connecting-links, but they were not numerous and important enough to exercise a determining influence. The character of the political and social life of the south was determined by the natural three-fold division of society which grew out of slavery.

The consequences of this peculiar arrangement of social circumstances were the more destructive, the more the political institutions assumed a purely democratic character, for in just this proportion the whole politico-social system was based on a broader lie. All class-government is demoralizing, and the ruling class is so much the more demoralized the more its mastery is merely a matter of fact

[1] According to the census of 1850, commerce, trades and mining employed 180,334 persons in the slave states and 456,863 in the free states.

[2] In this general estimate, I have had in mind the state of things in the regular plantation-states. In the so-called border states there were manifold and not unimportant modifications. Their kind and degree as well as their political significance, will be hereafter discussed.

and not grounded in law, for then the disproportion between power and lawfully-imposed duty is so much the greater. The careful preservation of democratic appearances was so much of a necessity that the ruling class did not appreciate how far the democracy had become an empty appearance. It was no conscious, naked lie, when the Pinckneys, Lowndes, Calhoun, Cobb, Davis and others praised the slave states as the chief stronghold of political freedom. Men of this sort do not consciously lie to themselves for generations. The insolent compassion with which the rôle of Cinderella was assigned to the free states bore the unmistakable stamp of unfortunate conviction. It sounds absurd, and yet it was true, that just because the multitude followed them blindly, the leaders honestly thought that the south was inspired by that earnest spirit of freedom which was ascribed to the fathers of the republic.[1] The multitude had an undeniable right to make its will the determining element, and it followed its leaders on the path on which their safety lay and which they looked at, from their standpoint, not without reason, as the path to freedom. And, in fact, the multitude applauded them the more loudly, the greater demands they made in the interest of their own safety. The wider the chasm between the mass and the great planter became, so much the more deeply the former, relying on the fact of equal political rights, intoxicated itself with a ludicrous belief in political equality, and thought that the inevitable result of this was an equality of interests. There was no sober investigation of the question how far the facts justified this view, because the multitude blindly confused power and freedom. It was precisely the poorest, and from every

[1] Yet I do not mean by this to say that the aristocracy had no eye whatever for the degradation of the city and country proletariat. When it considered the circumstances of the south by themselves, and not in comparison with those of the north, it was fully aware of this. The expression "white trash" originated, not in the north, but in the south.

point of view the most abject, whites who found the greatest satisfaction for their self-love in the thought that they were members of the privileged class. He who wished to span the broad gulf which separated them from the slaves (who had no rights) or was suspected of entertaining this wish, was their deadly enemy, for he threatened to expose them in all their neediness, defenseless and naked; he disputed their "right" to the beggarly pomp that was due only to the deeper degradation of others; and he therefore trespassed upon their "freedom." Attempts to show that the first cause of their material, spiritual and moral needs lay in this deeper degradation of others, could not be made. And if they could have been, they would have remained without result.

When slavery had once become a controlling interest, a change for the better could not come except by means of a powerful impulse from without. There were no elements within which could make an opposition to it of any weight whatever. The natural advantages of the section invited the immigration of fresh elements with sound moral, industrial, and political views; but the paralyzing curse on every effort prevented any especial result from this cause. Slavery became more and more of a Chinese Wall, which separated the south from the rest of the civilized world. Safety demanded that the comparatively small number of immigrants should be forced by moral pressure to swim with the stream. If this pressure did not at least impose silence upon them, then men soon ceased to limit themselves to moral suasion. And yet at every moment the fact made itself felt that modern civilization is not the peculiar possession of different nations, but has a universal, world-embracing character. The result of this was a growing violence and brutality in the efforts to resist its influence. Everything was considered in reference to the "peculiar institution," and therefore hostile distrust of everything was felt, because this insti-

tution was in ever sharper contradiction with the spirit of the age. Slavery in the United States showed itself each day, to civilization, as more and more clearly the greatest piece of theft of all time, and the slavocrats, like a common thief, began to fear the rustling of every leaf.

The reconciling and healing power of time had, in this case, to be put to shame. North and south had to ever go farther apart, since their opposition in all the points already mentioned was a natural result of their different industrial systems.

These systems had to develop themselves, and as they did so their results had to be more keenly felt, and the sectional separation had to become more sharply marked. This explains the frightful rapidity with which the contest narrowed down to "either—or." If the industrial development of both sections had been less rapid, then the Union would probably be divided to-day into slave and free states.

The unexpectedly speedy development of the industrial system of the slave states was the result of a single invention. Cotton was exported from the United States for the first time in 1791.[1] It is apparent from art. XII. of the treaty negotiated by Jay with England, that cotton was not then known to Jay as an article of export. It had already become evident that some of the southern states were especially adapted to the cultivation of cotton. Up to this time the plant had not been cultivated on a greater scale only because the separation of the seed involved too much labor. The cotton gin, invented by Eli Whitney in 1793, cured this misfortune. While a man could then make ready for the market only one pound per day, the cotton-gin cleaned three hundred and fifty pounds a day. As soon as the worth of this invention had been tested by experience the cultivation of cotton received a tremendous

[1] 19,200 lbs. Webster, Works, V., p. 388. Compare Hamilton's Report on Manufactures, Dec. 5, 1791. Ham., Works, III., pp. 272–275.

impulse. As early as 1800, 19,000,000 pounds, worth $5,726,000, were exported. By 1824 the export had increased to 142,369,663 pounds, worth $21,947,401.[1] This sudden gigantic development of the new branch of industry involved a corresponding increase of the demand for labor, that is, a corresponding increase in the price of slaves.[2] The vague dreams of emancipation, in which the people of the northern slave states indulged during the first years under the new constitution, had a realistic basis. Slave labor proved to be so unsatisfactory that men began to think about the possibility of a time when it would become a mere consumer of capital. The emancipation of slaves became more common because it demanded only a small sacrifice. The invention of the cotton-gin altered these circumstances at a blow. The demand for slaves could no longer be satisfied, although the northern slave states—especially Virginia and Maryland—at once devoted themselves to slave-breeding.[3] In this way cotton

[1] Compare the statistical tables of the products and exports of the south, completed to 1860, in Kettell, Southern Wealth and Northern Profits, p. 21. Kettell does not give his authorities. Compare also the somewhat different views of Kapp, Geschichte der Sklaverei, p. 107.

[2] I have not been able to find trustworthy statistical data on this point. Kapp's statement (p. 108) that the whole slave property was estimated, in 1790, at $10,000,000 and in 1820 at $1,200,000,000, certainly rests on an error. According to the census of 1790 the number of slaves in the southern states was 657,047. By that of 1820 it was 1,524,580. The average price of a slave, when children and the old were reckoned, would then have been in the earlier years about $15, and in the later ones about $780. The first sum is evidently too low and the last is probably too high. The Virginia *Times*, in 1836, estimated the average value of the negroes exported out of the state at $600 per head. (Niles' Reg., LI., p. 83.) Kettell, p. 130, estimates the value of the slaves in 1798 at $200. and in 1815 at $250 per head.

[3] In 1829, in the Virginia convention, Mercer estimated the value of the slaves annually exported from that state at $1,500,000. Deb. of Cong., p. 99. In Alabama the value of the slaves imported from the northern slave states from 1833 to 1837 was estimated at $10,000,000. Jay, Misc. Writ., p. 267.

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culture became a profitable pursuit for those slave states that were not especially fitted for it. The whole south saw the most brilliant future before it. It thought itself sure, not only of unmeasured wealth, but also of political mastery. If the north, despite the efforts of the New England states, had hitherto steadily followed the leadership of the south, how could it emancipate itself from it when the cotton culture, to which no limits seemed to be set, should have reached its full development? In the debate over the Missouri question McLane of Delaware thought he could safely prophesy a more speedy development for the south than the north,[1] and the latter by no means threw back the assertion as nonsensical rhodomontade. Roberts of Pennsylvania admitted its probability, and used it for a justification for the refusal to extend the slavery area.[2]

On a superficial view this idea might seem justified. The north only recovered slowly from the blows of the Revolutionary war. Nothing happened which could give its development a sudden, mighty impulse, and the embargo policy of the Republican party, as well as the war of 1812, put brakes on its progress. But this lagging of the north behind the south was only in appearance. Comparison of the population of the two sections was the only thing needed in order to show this. As yet there was no noticeable immigration into the northern states, and yet the south was farther outstripped each year. The industrial development of the north struck its roots deep into the ground, so that a stem of hitherto unknown dimensions could shoot out from them in course of time; in the south, on the other hand, the stem, under hot-house pressure, burst into luxurious foliage, but the roots lay on the surface and withered away. The population of the two sec-

[1] Deb. of Cong., VI., p. 361.
[2] Ibid, VI., p. 492.

tions, according to the first four censuses, was as follows.

	1790	1800	1810	1820
North	1,968,455	2,684,625	3,758,820	5,132,372
South	1,961,327	2,621,300	3,480,994	4,522,224

This slower increase of population in the south was mainly due to two causes. The slaves' impulse of self-preservation was subject to the control of the masters. Food, clothing, shelter, the kind and amount of labor,—these depended solely on the will of the masters. Although, as a general rule, interest demanded the longest possible preservation of the living capital, yet evidently, in both big and little things, less care would be shown for the slaves than the free workmen of the north showed for themselves. As the slaves produced less than the free laborers, the cost of supporting them had to be much less in order that their labor should pay. But less care involved a greater death-rate. Moreover, a good share of the best plantation districts was exceedingly unhealthy, and for this reason too the consumption of human life was quite peculiarly great.[1] In this section, men partly came to the conviction, through experience, that interest demanded, not the longest possible preservation of the negro, but the greatest possible use of his strength during a shorter time. This conviction was naturally acted upon.[2] The

[1] According to the report of the secretary of the treasury of Jan. 19, 1831, the number of deaths on the sugar plantations of Louisiana exceeded the births by two and one-half per cent. According to an article in the New Orleans *Argus* in January, 1830, the loss of Louisiana planters on the negroes imported from more northern states amounted to twenty-five per cent. This statement may be exaggerated, but that the death-rate among this class of slaves must have been very great is plain from the fact that in the advertisements of slaves offered for sale, acclimated negroes play a great part. Jay, Misc. Writ., p. 272.

[2] According to Giddings, the negroes imported from the slave-breeding states to the cotton plantations remained capable of work, on an average, only seven years. A convention of slaveholders in South Carolina came, after careful discussion, to the conclusion that it was most profitable for the masters to use up the slaves within this time. Giddings, Speeches, p. 142.

business of the slave-breeders increased all the more, but the artificial impulse which they gave to the speedy increase of the slave population could not keep pace with the natural forces which caused the extraordinarily rapid increase of the population in the free states. The difference was not at first very marked, but it grew—especially after immigration into the northern states began to assume significant proportions—in geometrical progression.

This difference in the increase of the population of the two sections was of the greatest significance for their power in the federal legislature, since the representation in the lower house of congress was decided according to the number of people. Since, moreover, in making up the representation, five slaves were reckoned as only equal to three white men, the difference of representation in favor of the north was much greater than the difference in the absolute number of people. The absolute increase of the slave population of the southern states from 1790 to 1820 was 867,533, but this amounted to only 520,520 as far as representation was concerned. In 1820, the total slave population of 1,524,580 souls counted as a represented population of 914,748. In this year, while the real difference between the populations of the two sections was 610,148, the difference, considered from the point of view of representation, amounted to 1,219,980. The representation of the two sections in the lower house of congress until the rearrangement in accordance with the census of 1830 was as follows:

	Before the first census	1790	1800	1810	1820
North	35	57	77	104	133
South	30	53	65	79	90

In these figures it was written, clear as day, that the slave states would have to yield the mastery of affairs to the north soon and forever, if they could not find in some other place a counterpoise to the north's growing power in the house of representatives. Threats and other political acts of every sort and of all manner of duplicity might

for a while hold a sufficient number of northern representatives under their control, but in the long run this was impossible, for the northern people had to come to believe that they were being driven by their politicians in direct opposition to their material interests. But the political mastery of the slave states was an essential condition for the continued existence of slavery in the Union. The south had, then, to pay especial attention to the senate. In this body, representation was independent of the population. It could not only paralyze every action of the house of representatives, but it had besides this several especial privileges of the weightiest character. As long as the slaveholders controlled an equal number of states, so long was the equality of power maintained, as far as it possibly could be. And wherever the south had raised the question of slavery in any way, it was now practically certain that there the slaveholding interest would be the ruling one, for it had the whole power of the section behind it, since self-preservation made it necessary for the south to form in solid phalanx in its support. This gives the key to the stubborn tenacity and passionate energy with which the south for three years fought out the Missouri struggle and all the later contests in behalf of the extension of slave territory.

The outer history of the struggle between the two sections over Missouri can not be followed out here in all its different phases.[1] The facts, a knowledge of which is nec-

[1] It can be found in Kapp, Lunt, Giddings, Wilson, and in many other easily attainable books. Neumann's Darstellung (II., p. 324, seq.) should not be used, since the most essential facts are wrongly judged. He turns matters around wrong end foremost, in a laughable way, since he makes the Missouri question appear as an appendix to the organization of Arkansas as a territory. March 16, 1818, a petition was presented to the house of representatives from inhabitants of Missouri, who asked permission for that territory to form a state constitution in order to be admitted as a state. This petition, with others of similar contents, was referred to a committee which brought in a bill April 3. But it was not until Dec. 16, 1818, that a committee was appointed, on the motion of

essary in order to judge of the position of both parties, the character of the constitutional questions involved, and the consequences of the final issue, can be concentrated into a few words.

In February, 1819, the house of representatives went into committee of the whole over the admission of Missouri as a state. The recommendation of the committee provided in the ordinary manner what was necessary to this end. Tallmadge of New York moved the amendment that the admission should be made dependent on the two following conditions: prohibition of the further introduction of slaves, and emancipation of all the slave children born after the admission as soon as they reached the age of twenty-five. This motion gave life to the whole strife, and the idea embraced in it remained the essence of the strife until the decision of its most important points. The majority of the house of representatives voted to make the admission of Missouri as a state dependent upon such a limitation of her power in regard to slavery; but the majority of the senate decided against this. Both houses insisted on their respective resolves, and congress adjourned without coming to any final decision. When the question again came up in the next session the opponents of the so-called "Missouri limitation" found

Robertson of Kentucky, to consider the propriety of organizing Arkansas as a territory by itself. (Compare Deb. of Congress, VI., pp. 122, 222.) It is a much weightier fact that Neumann puts the north in a thoroughly false light, in that he makes Tallmadge bring in a motion "according to which precautions should be taken for the emancipation of the slaves *already* living in the territory." Tallmadge and his companions affirmed on numberless occasions, in the debate, that they had never had the intention of interfering with the right of property in the slaves already living there, and their opponents often used this to reproach them with inconsistency. On p. 327, the author makes the strangest statements about the growth of population of the two sections and the relation which the growth of representation had to this, etc. These short notes may serve as a further reason for the opinion already expressed concerning the thoroughness and reliability of this work.

themselves materially aided by a new circumstance. Maine, which had hitherto been a district of Massachusetts, applied for admission as an independent state. The majority of the senate coupled together the Maine and Missouri bills, and so put before the majority of the house the alternative of admitting Missouri without any limitation, or denying, for the present, the admission of Maine. The house was not yet ready to acknowledge itself so easily beaten. Neither earlier nor later has a struggle been fought out in congress in which the majorities of both houses have stood by the decision once arrived at with such stiff-neckedness. The close of the session constantly drew nearer, and an agreement seemed farther off than ever. The whole country was in a state of feverish excitement. At the last moment, in the night between the second and third of March, 1820, free labor and the principle of nationality yielded to slavery and the principle of state sovereignty. If the matter had affected Missouri alone, the defeat would have been of comparatively small practical significance; but two principles had been given up, and these two principles involved the weal and woe of the republic.

The statesmen of the south had always pursued the sly policy of accusing the north of narrow-hearted and selfish policy and of claiming for themselves a lofty ideal standpoint, from which they, impelled by brotherly love and inborn nobility, were ready to carry self-renunciation to the verge of folly, but could not yield an iota of the demands of the right for the sake of all the whole world could offer. This rough mask was good enough to serve as a pretext, not only for putting forward the most unjust demands, but also for declaring, in the same breath, with sublime shamelessness, that the interest of the south demanded such and such a thing, and that the north must therefore comply with it, whether or no. In the struggle over Missouri, Brown of Kentucky repelled, in brilliant pomp of language,

as a pitiful and lying insinuation, the statement that the south was paying any attention to the "balance of power"; he had been "alarmed" by such thoughts; the inexorable demands of justice and intelligence were alone in question.[1] It was foolish to twit the north with such phrases, after the south had reached its end by the unnatural alliance of the Maine and Missouri bills. Smith of South Carolina had roundly declared in the senate that consent to the admission of Missouri without limitation "must" be given before Maine could be let in.[2] Clay had spoken just as plainly in the house,[3] and no one had pretended that the union of the two bills was only a harmless whim of the senate. It would have been unreasonable to make Maine suffer because the north wished to curtail the "constitutional rights" of Missouri. The matter was intelligible only on the supposition that it compelled a bargain which, as the south affirmed, gave equal chances to both sections. We should do injustice to the political insight of the statesmen of the south, if we admitted that they really looked at the bargain in this way. Hardin of Kentucky[4] and Tucker of Virginia[5] openly explained: "We are struggling for our political existence."[6]

The south by no means limited itself to a discussion of the mere question of law, but brought forward a crowd of pleas in justification. It was asserted that the Louisiana territory, to which Missouri belonged, had been obtained at the cost of the whole Union, and that it would

[1] Deb. of Cong., VII., p. 103.
[2] Ibid, VI., p. 383.
[3] Ibid, VI., pp. 472, 474.
[4] Ibid, VI., p. 499.
[5] Ibid, VI., p. 559.
[6] John Randolph wrote: "They [Arche, Mason, and himself] determined to cavil on the ninetieth part of a hair in a matter of sheer right, touching the dearest interests, the life blood of the southern states." Garland, Life of J. Randolph, II., p. 128.

therefore be unjust to deprive the inhabitants of half the Union of the "colonization right"; but this would evidently be the case if they were forbidden to take their property with them. It was said, on the other hand, that slavery would present an impassable wall to immigration from the north. Where labor bears the stamp of shame the free laborer cannot turn his steps. But how could there be hesitation when the choice was to be made between the exclusion of slavery or free labor? The Union should be a nursery of freedom, and not a breeding-place for slavery. The south itself declaimed with the greatest pathos over the curse of slavery. Was it not, then, a self-evident duty to preserve the land from any extension of the curse?

The last part of this argument was repelled with great decision by the majority of southern members. They affirmed that when it was proposed to allow the importation of slaves from Africa or from any foreign country, the south would be first and most earnest in protesting against it. But by compliance with the wish expressed by the south, the slave population of the Union "would not be increased by a single soul." Ever and ever again it was affirmed with Jefferson in his old age: "All know that permitting the slaves of the south to spread into the west . . . will increase the happiness of those existing, and by spreading them over a larger surface will dilute the evil everywhere and facilitate the means of getting rid of it—an event more anxiously wished by those on whom it presses than by the noisy pretenders to exclusive humanity."[1] The

[1] Jefferson's Works, VII., p. 194. In the same letter, he curtly declares: "It is not a moral question, but one merely of power." Yet he was not willing to admit that the south was fighting merely for the balance of power. In another letter he writes: "The Missouri question is a mere party trick. The leaders of Federalism, defeated in their schemes of obtaining power by rallying partisans to the principle of monarchism, . . . have changed their tack and thrown out another

north had to let its "pretended humanity" be thrown into its face, as an impudent lie. Instead of lightening the lot of the unfortunate slaves, it wished, said southern men, to hedge them into a fixed territory, where they must infallibly "perish of hunger and want" in the course of time.[1] It was not difficult for the representatives of the north to overthrow this dishonest as well as weak reasoning. The assertion that the number of slaves would not be increased by the extension of the slave territory—said Roberts—is plainly false, because the extension of the market must result in an increase of price, and the latter must give a strong impulse towards increasing the supply of slaves.[2] Moreover, it is a known law that when the means of subsistence increase, an increase of population takes place. These reasons were so convincing that Barbour of Virginia[3] and Pinckney of Maryland[4] could not but recognize their validity. Yet despite this, just as before, speech upon speech was piled up on the theme that an extension of the evil would be a "dilution" and, therefore, a mitigation of it.

After these reasons for justification, the treaty of purchase with France was brought in as a legal objection against the limitation. Art. III. read: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they

barrel to the whale." Works, VI., p. 180. From another point of view, as we shall see, he recognized with perfect clearness the tremendous range of the question.

[1] The Baptist churches of Missouri "protested" against the limitation, and "warned" congress "in the name of humanity" not to adopt it. Niles' Reg., XVII., p. 210.

[2] Deb. of Congress, VI., p. 432.

[3] Ibid, VI., p. 429.

[4] Ibid, VI., p. 441.

shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess."[1]

The south sought to deduce from this article the impossibility of obliging Missouri to free the children born of slaves, after her admission into the Union, as soon as they reached their twenty-fifth birthday, because this would infringe upon the right of property guaranteed by the treaty to the masters. This was denied by the champions of the limitation, because it was against natural right and sound common sense to recognize in the master an endless right of property in the yet unborn descendants of his slaves. It was just as little possible to use the assurance "of all the rights, advantages and immunities of citizens of the United States" as an argument against the limitation. Slavery existed only through municipal law; as a citizen of the United States, no one had the right to hold slaves.[2]

The opponents of the limitation found a further ground in the provision of the treaty that the inhabitants of the Louisiana territory should be admitted to the full enjoyment of the rights of citizens "as soon as possible." It was affirmed that Missouri now had the necessary number of inhabitants to organize as a state, and that therefore, according to the treaty, her admission must follow without delay.

Despite the evident absurdity of this objection, the exhaustive debates over it must be reviewed, because constitutional questions of deep significance were touched upon in them.

If, on one side, the expression "as soon as possible" was

[1] Stat. at L., VIII., p. 202.

[2] M'Lane, of Delaware said: "As such, as citizens of the United States, the right to possess slaves is unquestionable." (Deb. of Congress, VI., p. 362.) This assertion was so bold that it was not made party doctrine. But men sought to attain the same end by a thorough trick. They "proved" that the states had the right of allowing or forbidding slavery, and then argued with bold misuse of language, as if they had spoken not of states, but of "citizens of the United States."

emphasized, upon the other, emphasis was laid upon the phrase "according to the principles of the federal constitution." These certainly did not require exclusive attention to the population of a territory. What they required in the case now before us, congress had to discover and decide for itself; only it could not delay admission without a reason. But even if a more sweeping duty could be inferred from the clause of the treaty quoted, yet it is undeniably true that congress could not be further bound by any sort of stipulation. Treaties are, indeed, according to the constitution, "the supreme law of the land," but only so far as they do not stand in opposition to the constitution itself.[1] President and senate, to whom the treaty power is confided by the constitution, could not, by their one-sided action, curtail the constitutional powers of congress. Whether this has been done in a given case, is not simply a question for the supreme court to decide. The three branches of the government are co-ordinate, and each of them, therefore, has the right to decide independently concerning the extent of its constitutional power.

The first part of the argument was absolutely unanswerable, and if the rest may perhaps be questioned, yet it could not be readily contradicted by the party which passed, April 7, 1796, a resolution which claimed for the house of representatives the right, in all cases in which its co-operation was necessary for the accomplishment of treaty stip-

[1] Compare Story, Comm., §§ 1836–1841. "The stipulations in a treaty between the United States and a foreign power are paramount to the provisions of a constitution of a particular state, or the confederacy." Lessee of Harry Gordon vs. Kerr *et al.*, Washington Circuit Court Rep., I., p. 322; Stat. at L., VIII., p. 3. According to this the senate and president could overthrow the whole constitution. The treaty power is created by the constitution. It is therefore subordinate, and not superior, to it. The constitution can not give its creatures the right to arbitrarily destroy it.

ulations, to deliberate and determine on the "expediency" of the stipulations.[1]

These justifications and the treaty were brought forward by the slaveholders and their comrades only as props for their position. They were neither able nor willing to rest the decision of the question of law upon any other ground than that of the constitution. We must do the south the justice to admit that in this struggle over constitutional questions it did not indulge in the verbal quibbling which became more and more the rule in such debates. It placed itself openly, and without any duplicity, on the broadest basis upon which it could take position. It denied to congress the least shadow of right to make the admission of a territory as a state of the Union dependent upon any conditions whatever. This view was not based upon certain clauses of the constitution, but on the nature of the Union—that is, on state sovereignty.[2] Pindall of Virginia stripped off all the vagueness which had hitherto enveloped the definition of this expression, and with a rigorous logic drew from it the last consequence, which was first recognized as a fundamental party belief when formulated with the same rigor many years after this by the state-rights men; he explained the federal constitution as an "international compact."[3] On this basis the whole argument for the general, as well as the specific, cases can be condensed into four short sentences: The federal government has only the powers granted it by the sovereign states; newly admitted states become members of the Union with equal rights; no other grants of power can therefore be demanded from them than those voluntarily

[1] Deb. of Cong., I., pp. 696, 702. When, in 1816, the same question came up again, the house of representatives abandoned these pretensions, but the position it took did not contradict the doctrine developed in the text in any way whatever.

[2] Deb. of Cong., VI., p. 361, and in many other places.

[3] Ibid, VI., p. 527.

made by the thirteen original states, and exactly stipulated in the constitution; no one affirms that the thirteen original states gave up the right to decide whether slavery should be permitted or forbidden within their boundaries.

On the other side, the principle of nationality was by no means used with equal decision in opposition to this extreme particularism. The general reasoning had more of a moral than a legal character. Men went back to the principles of the Declaration of Independence, and appealed to the clause of the constitution according to which "the United States shall guarantee to every state a republican form of government."[1] The elucidation of the question from these two points of view was not worthless, but so far as the decision of pending legal questions was concerned, it was irrelevant. The Declaration of Independence was no binding, legal instrument, and slavery could not legally be regarded as in opposition to a republican form of government, since it existed in most of the states as a fact recognized by the federal constitution, and even cared for therein by positive provisions. Search was therefore made for a constitutional provision from which, in other ways, the legal right could be inferred, first, to impose conditions upon the admission of states to the Union, and second, to impose just the condition now under discussion.

In regard to the general right, reliance was placed upon the fact that Ohio, Louisiana, Indiana, and Illinois had been admitted under certain conditions, without any opposition being made to this from any side. Even in the Missouri bill, then under discussion, other conditions had been inserted with the approval of the same members of congress who now wished to deny the existence of the right.[2] Moreover, this right was undoubtedly conferred

[1] Art. IV., Sec. 4.

[2] An amendment submitted by Taylor was adopted, which forbade the state to tax, for five years, the lands of soldiers. Deb. of Cong., VI., p. 352. Compare Statutes at Large, III., pp. 547, 548, Sec. 4 and Sec. 6.

in art. IV., sec. 3, § 1, of the constitution: "New states *may* be admitted by congress into this Union." This does not impose a duty upon congress, but grants a right which it can use in accordance with its discretion.

The opponents of the limitation tried to escape from these precedents by every sort of possible pretext. They paid especial attention to the constitutional provision. Pinckney of Maryland made the keenest argument on this question.[1] He admitted without reserve that congress could reject an application for admission into the Union, but contended just as unreservedly that from this the right to attach conditions to the granting of the application could not be inferred. The doctrine that the powers of the Union consisted only of those "expressed"[2] has never been more recklessly followed out to the verge of absolute absurdity than in this debate. But Pinckney, who, despite his unbearable pomposity of language, was a sharp-witted lawyer, saw himself compelled to choose this course. State sovereignty did not suffice to maintain the position already taken even if the other absurdity had been admitted that a territory which wished to become a state became possessed of full state sovereignty by merely expressing this wish. Directly from this "sovereignty" the right could be deduced to conclude a treaty with the Union through congress, or, if this expression falls short of the truth, to impose certain conditions upon the proposal. If this should be denied, then, too, the right of congress to make such proposals, that is, to conclude such a treaty, must also be denied.

All the state-rights men would not go as far as Pinckney. Some of them laid especial emphasis, in their argument, upon another idea. They affirmed that it would be useless to burden the territory with a condition, because the

[1] Deb. of Cong., VI., p. 440.

[2] I speak here only of this one side of the argument; another side of it will be discussed later.

sovereign state would not be bound by it. Quite consistently they then farther affirmed that the states formed out of the northwestern territory and admitted under the anti-slavery provision of the ordinance of 1787, were free to legalize, at any moment, the introduction of slavery.

On this question, which involved the fundamental principles of the whole constitutional law of the United States, the defenders of the limitation were not all of the same opinion, and they entirely failed to grasp its whole range. Roberts wished to have the prohibition declared "absolute and irrevocable."[1] Otis thought it laughable that a duty, without undertaking which the territory could not become a state, and which was not to take effect until the instant when it did become a state, could yet lose its binding force because the territory had become a state.[2] Taylor did not consider the assertion of the state-rights men as correct, but expressly declared that he would be in favor of the restriction in the opposite case, because the desired end would be reached by its moral influence.[3] Others approached the difficult question with still greater foresight. Yet not one rejected the claim that had been made on the ground that it was clearly and certainly in direct contradiction to the fundamental law of the Union. As a territory—and this was now commonly recognized—Missouri was absolutely under the legislative control of congress. If her admission as a state was made subject to such a condition, then the state of Missouri found itself confronted by a federal law in full force, which might be eventually declared unconstitutional by the supreme court of the United States, but upon which the state could in no way lay its hand. The "holiness of treaties," the "sacredness of compacts," etc., to which men appealed,[4] were not

[1] Deb. of Cong., VI.. p. 389.
[2] Ibid, VI., p. 418.
[3] Ibid, VI., p. 338.
[4] Ibid, VI., p. 353, and in many other places.

needed to prove this,—always supposing that the separate states, as far as they came in question, had not the right to decide concerning the constitutionality of federal laws, to decide, that is, whether they were laws.

The debate over the other question, whether a provision could be found in the constitution which especially authorized the prohibition of slavery in a state about to be admitted, is of little importance in constitutional history, inasmuch as it was only a wrangling about words.[1] There was, moreover, no need whatever of any special authority, if the general power was maintained. This was the kernel of the whole strife. The fundamental question of the nature of the Union was contained in it and only in connection with this could the strife between slavery and free labor come to a decisive result.

From the nature of the Union, then, an argument was drawn which the reasons advanced in behalf of the limitation shook, but could not overthrow. Charles Pinckney affirmed with great keenness that the constitution authorized the admission of new states "into *this* Union," that is, into the Union as it then was.[2] He went on to say that it was an undeniable fact that the rights of the thirteen original states under the constitution had been absolutely equal. No one will deny that the constitution could never have

[1] It was made a matter of discussion whether the words "importation" and "migration" in the clause which in negative form gave congress the right to prohibit the foreign slave-trade from 1808, were synonymous. Charles Pinckney (Deb. of Congress, IV., p. 534), recalling his participation in the deliberations of the Philadelphia convention, affirmed that "migration" was understood to refer only to "free whites." Madison, however, declared in a letter written Nov. 27, 1819, to J. Walsh that both words were used as meaning exactly the same thing. The superfluous "migration" had been used instead of "importation" for precisely the same reason that caused the avoidance of the word "slave." However this may be, it seems to me that there cannot be the slightest doubt that "migration" was used for "importation" and was not understood as "migration from one state into another."

[2] Deb. of Congress, VI., p. 440.

come into being if this had not been the case. It is therefore no longer *this*, but a substantially different, Union if the members of it are to have different rights. That the thirteen original states had and have to-day the right to forbid or allow slavery, will not be questioned. If this right is taken away from newly-admitted states, then the Union evidently consists no longer of equal members. But if congress has the power to deprive newly-admitted states of a substantial right belonging to the original states, it can do the same thing with other rights. No boundary can be drawn, if the principle is once admitted. The assurances that congress would never wish to impose other essential limitations are worthless. Since the majority of the house of representatives is now of the opinion that the prohibition of slavery is demanded by the well-being of Missouri as well as of the whole Union, a future congress may be of the same opinion in regard to any other prohibition whatever. The principle of choice is introduced into a fundamental constitutional question. It must tend to change the harmonious formation of the Union into a chaotic confusion.

It was not wholly without reason that the slaveholders and state-rights men declared that a comparison between the slavery-limitation and the other conditions which had been laid upon newly-admitted states was not possible. From the beginning the latter had either been self-evident or had concerned relatively unimportant questions, and had bound the states concerned only for a certain time; but this was permanent, and concerned a right that could be considered, without doubt, as a fundamental one. It was indeed said that the slavery limitation did not really withdraw a "fundamental right," but rather did away with a "fundamental wrong." But the constitution had left to the original states the right of tacitly letting the fundamental wrong stand as a "right" or of making it one. If several states made no use of this prerogative, and if the facts of every

day showed it to be more than a destructive fiction that slavery was a "purely municipal institution," yet this did not change the positive right. Slavery ate into the life-marrow of the whole Union; therefore not only considerations of morality, but the highest self-interest of the Union, demanded the absolute prohibition of its further extension. But morality and self-interest could not do away with the fact that the whole constitution rested upon the foundation of the equality of the members of the Union, and that the original members had full freedom of action in regard to this particular question.

The unconquerable obstacle can be expressed in a single sentence:—the fact could not be done away with that the Union was composed of free and slave states—that is, the fact could not be done away with that the attempt had been made to construct out of heterogeneous elements not only a harmonious, but a homogeneous, whole.

Arguments could not bring the question any nearer to a solution. After the differences of principle between the two parties had been clearly established, the debates served only to excite passion. The slaveholders sought more than ever to make a bridge of threats upon which they could cross to their goal.[1] It is said that Randolph proposed to Clay to abandon the house to the northern members and that Clay actually gave the project serious consideration.[2]

Missouri herself took an extremely arrogant position. When Taylor moved, Dec. 16, 1819, to defer the consideration of the bill until the first Monday in February, 1820, Scott, the delegate of the territory, objected that Missouri

[1] Even in brutality of expression, a marked advance was made. Thus, for instance, Colton of Virginia said: "He [Livermore of New Hampshire] is no better than Arbuthnot or Ambrister and deserves no better fate." (Deb. of Congress, VI., p. 351.) Arbuthnot and Ambrister had been sentenced to death, under martial law, by Jackson on account of their alliance with the Seminoles.

[2] Garland, Life of Randolph, II., p. 127; Colton, Life, Correspondence, and Speeches of Henry Clay, II., p. 263.

would, in this case, go on and organize a state government without waiting any longer for leave from congress.[1] And this threat of the territorial delegate against the whole Union was not punished as a piece of laughable insolence. Reid of Georgia declared that Missouri would "indignantly throw off the yoke" and "laugh congress to scorn."[2] Tyler of Virginia, the future president, asked what would be done if "Missouri sever [herself] from the Union?"[3] And Jefferson, the ex-president, expressed the fear that Missouri would be "lost by revolt."[4] However serious or little serious these threats and expressions of fear were intended to be, it may yet be inferred from them how high the slaveholders and state-rights men estimated the strength of the Union. They had a truer idea of the nature and the range of the question than their opponents. It was a really true prophecy when Cobb of Georgia cried out: "You are kindling a fire which all the waters of the ocean cannot extinguish; it can be extinguished only in blood."[5] But indeed the prophecy was verified only because ever and ever again representatives of the north were found who paid the price upon which dear peace apparently depended.

During the whole struggle the decision had depended only upon a few votes, for a number of northern representatives had voted, from the beginning, with the south.

[1] Deb. of Cong., IV., p. 469; Colton, Clay, I., p. 278.

[2] Ibid, VI., p. 490.

[3] Ibid, VI., p. 551.

[4] Jeff., Works., VII., p. 148. Even the state legislatures took a lively part in the strife. As a general rule the agitation was much more vigorous in the north than in the south. The northern legislatures, and with them that of Delaware, expressed themselves in very decided resolutions against the extension of the slave area. The house of delegates of the Virginia legislature, on the other hand, passed resolutions containing the expressions "bound to interpose" and "resist." Niles' Reg., XVII., pp. 343, 344.

[5] Deb. of Cong., VI., pp. 351, 372.

That it was, nevertheless, so long before the south obtained, by threats and worse means, the necessary number of votes, is a plain proof that an independent and honorable spirit was then much more common among northern politicians than later. The restriction was finally stricken out by a majority of only three votes.[1]

The results of this defeat were immense; but still more fraught with evil was the second defeat which the north suffered at the same time, and almost indeed without a struggle. This question has often been treated in connection with the first, but it was not only actually independent of it, but essentially different from it, as a matter both of constitutional law and practical politics.

Since only the northern part of the Missouri territory was to be organized as a state, the southern part, the so-called Arkansas district, had to receive a territorial government of its own. When the bill concerning this came up for discussion in the house, Taylor proposed an amendment in regard to slavery like the one which Tallmadge had brought up in the case of Missouri. In committee of the whole the amendment was rejected by eighty to sixty-eight votes. In the house it had a somewhat better fate. The first part, which forbade the further introduction of slaves, was rejected by seventy-one to seventy votes; but the second part, which freed slave children born in the territory upon their twenty-fifth birthday, was adopted by seventy-five to seventy-three votes. With the help of parliamentary rules, however, the question was brought once more before the house. By the casting vote of the speaker, Clay, the bill was referred back to the committee, and on the same day, in accordance with its report, the previously adopted amendment was rejected by eighty-nine to eighty-seven votes.[2]

The attempt to lay hand upon the peculiar institution

[1] Ninety against eighty-seven.

[2] See all the votes in Deb. of Cong., VI., pp. 363–366.

in this territory was regarded by the slaveholders as an especial bit of spitefulness, because Arkansas was considered as belonging to the peculiar domain of the south. This opinion influenced some northern representatives, and to it the easy victory of the south is to be ascribed. The arguments brought forward on both sides of the debate were the same as in that over Missouri, only the constitutional question was not raised. Taylor of New York laid stress upon the fact that the "sovereignty" of congress over the territories was "full and undisputed."[1] M'Lane, indeed, did not unconditionally admit that congress could forbid slavery in the territories, but he could only allege in justification of his doubt that the territories would become states in time.[2] But when Taylor afterwards expressed his conviction that no member of the house doubted the power of congress to do this thing, then neither M'Lane[3] nor any other member of the house interposed any objection, and some leading slaveholders expressly admitted the right.[4] The thing was considered, as Taylor plainly expressed it, only as "a question of policy." And yet the victory of the south was so easy. This must be closely looked at in connection with the stiff-necked strife over Missouri, if we are to rightly judge the position of the north at this time in regard to slavery. When the territorial question soon after this came up again in another and much more important form, not a blow was struck for the universally recognized right and for the unconditional supremacy of free labor.

The eighth section of the Missouri act of March 6, 1820,

[1] Deb. of Cong., VI., p. 358.

[2] Ibid, VI., p. 362.

[3] In the Missouri debate he declared afterwards: "I admit it [the power to give laws to a territory] to be plenary, so long as it remains in a condition of territorial dependence, but no longer." Ibid, VI., p. 513.

[4] Ibid, VI., p. 341, and elsewhere.

provided "that in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36° 30′ north latitude, not included within the limits of the state contemplated by this act, slavery and involuntary servitude . . . shall be, and is hereby, forever prohibited."[1] This was the second half of the so-called Missouri compromise, and the responsibility for its adoption does not wholly rest upon a few weak or venal delegates from the north. Only five northern members voted against it.[2] The north thus gave its approval by an overwhelming majority to the division of the territories between free labor and slavery. It was indeed only declared that slavery should not be allowed north of 36° 30′, but this was self-evidently equivalent to saying that south of this line no hindrance would be put in the way of the slaveholders. The first suggestion of such a compromise was made by M'Lane in February, 1819, and he then expressly declared that the territories should be "divided" between the free and slave states.[3] It was never afterwards denied that this was a fair interpretation of the compromise. The action of the northern members can be justified from no point of view. Even in mitigation of their fault, it can only be alleged that, when they had decided to make a bargain, the one agreed upon seemed not disadvantageous, provided men did not look beyond the present time. The Louisiana territory—according to the boundaries set to it by the United States—was divided into two nearly equal parts by the line of 36° 30′. But while the Missouri question was still pending, an agreement was reached with Spain concerning the boundary line by which a great part of the southern half was lost to the United States.

How far the north soothed itself with the hope that the

[1] Stat. at L., III., p. 548.

[2] Deb. of Cong., VI., pp. 570, 571. Benj. Adams, Allen and Folger of Massachusetts, Buffum of New Hampshire, and Gross of New York.

[3] Ibid, VI., pp. 359, 363.

utmost bounds of slavery had now been definitely and permanently fixed, cannot be decided. But it needed no wonderfully great political insight in order to know that the slaveholders would sooner or later bend every nerve in order to make this hope an illusion. If they did not yet oppose the right of congress to forbid slavery in the territories, yet they showed themselves prepared to question it whenever circumstances demanded such action. Rhea of Tennessee had already used the word "unconstitutional."[1] Smyth of Virginia went much straighter to the goal when he remarked, in relation to the constitutional provision for the territories: "This clause speaks of the territory as property, as a subject of sale. It speaks not of the jurisdiction."[2] Yet the clearest utterance was that of the fact that the most violent opposition to the "Missouri line" came from slaveholders. No less than thirty-seven southerners voted with the five northern members against this part of the compromise.[3]

If men thought these signs worthy of no further atten-

[1] Ibid, VI., p. 366. It is evident from later discussions that he must have used the expression in relation to the division of the territories by a fixed line.

[2] Ibid, VI., p. 487.

[3] This fact was the foundation of the later assertion of the south that the compromise was a northern and not a southern measure. The assertion was not wholly ungrounded, if it was substantially false. Benton, the first senator from the new state, writes: "This 'compromise' was the work of the south, sustained by the united voice of Mr. Monroe's cabinet, the united voices of the southern senators and a majority of the southern representatives. . . This array of names shows the Missouri compromise to have been a southern measure, and the event put the seal upon that character by showing it to be acceptable to the south." Thirty Years View, I., p. 8. Crowninshield of Massachusetts said, in 1861, at the so-called peace convention: "Southern men forced the measure upon the north. The few northern men who voted for it were swept out of their political existence at the election which followed its passage." (Chittenden's Report, p. 318.) If this is to be applied to those who voted for the "Missouri line," then the assertion has no historical foundation whatever.

tion, because the United States had at that time no further territorial possessions, they understood very badly the history of the Union and of slavery up to that time. Experience had already shown that the politics of the United States was not a pastoral idyl. As Louisiana and Florida had been acquired, a hand might be stretched out towards other territory. Circumstances offered any number of alluring opportunities. And if new acquisitions were ever made in southern latitudes, the slave states would doubtless claim that the Missouri line was self-evidently binding in respect to these too. The north might thenceforth forever oppose the soundness of this logic and depend upon constitutional rights; the fact still remained that it had been indirectly stipulated in a solemn compact by the almost unanimous consent of the northern representatives that in a certain territory south of a certain line slavery should be allowed, whether or not congress forbade it. That the south knew how to use such facts had already been sufficiently shown. As surely as a slave territory became a slave state, so surely no veto of congress could hereafter prevent the existence of slavery "in *this* Union" in a state or territory lying south of 36° 30′.

The south had allowed itself to pursue a purely idealistic policy, where European relations were concerned, but where the interest of the slaveholders was touched upon, it had followed from the beginning a policy that was not only realistic in the highest degree, but wise. It took good care to demand everything forthwith. What it needed at the moment satisfied it for the moment. It propped the planks securely and then shoved them just so much farther that it could safely take the next step when it became necessary. It had done this at present, and was therefore contented for the present. Up to this time the free states had always been one more in number than the slave states. Now the latter got Alabama and Missouri into the Union, and the former only Maine. The balance of power in the

senate was therefore fully established. Their territorial possessions were, in the meantime, ample; Florida, just acquired from Spain,[1] Arkansas and the rest of the southern part of the Louisiana territory balanced for a while the northwest, which, as Charles Pinckney wrote, had been inhabited until now only by wild beasts and Indians. Why express alarm now over things which could become realities only after the lapse of many years? But it did not follow from this that alarm should never be expressed over them. Reid of Georgia had already asked why a partition line should not be drawn between the two sections "to the Pacific Ocean."[2]

Until the time came when the Missouri compromise could no longer be considered as the "final issue" of the question whether the territories and the new states should belong to slavery or free labor, it was permanently fixed. What M'Lane praised as the simplest and therewith the happiest means of permanently adjusting the controversy, Jefferson rightly recognized as the most destructive part of the whole unfortunate compromise. April 3, 1820, he wrote to W. Short: "The coincidence of a marked principle, moral and political, with geographical lines, once conceived, I feared would never more be obliterated from the mind; that it would be recurring on every occasion and renewing irritations, until it would kindle such mutual and mortal hatred as to render separation preferable to eternal discord. I have been among the most sanguine in believing that our Union would be of long duration. I now doubt it much."[3] This was a truly statesmanlike idea. If it could have given the text for the half of the speeches which were delivered in favor of the prohibition

[1] Feb. 22, 1819. Stat. at L., VIII., p. 252, seq. The ratification of the treaty by the United States was not given until Feb. 19, 1821.

[2] Deb. of Cong., VI., p. 502.

[3] Jeff., Works, VII., p. 158. Compare also the letter to Holmes of April 22, 1820, VII., p. 159.

of the further importation of slaves, the fate of the Union would perhaps have had a wholly different turn. Up to this time the division of the Union into two sections had been only a fact: henceforth it was fixed by law. In internal politics no question of cardinal importance could arise in which the opposition of the two industrial principles did not play a greater or less part. And in all such questions the law-making power stood not only before a number of states, but before two geographically divided groups of states. Each of the two groups inevitably constantly consolidated more and more; and the more they consolidated the more the Missouri line lost its imaginary character. For the first time there was, in the full sense of the term, a free north and a slaveholding south. "Political prudence," as it was hyper-euphemistically called, might lead one to oppose this with the strength of despair; but all political artifices were put to shame by the power of facts. Even the last resource, the erasure of the black line from the map by another law and by judicial decisions, remained without effect; the line was etched too deeply into the real ground. Only one thing could erase it, and this one thing was the destruction of the gloomy power that had drawn it. From the night of March 2, 1820, party history is made up, without interruption or break, of the development of geographical parties.

This was what was really reached when men breathed free, as if saved from a heavy nightmare. The little and cowardly souls congratulated themselves that the slavery question had been buried for ever, and yet men never shook themselves free from the Missouri question.

The strife was kindled again by a clause of the constitution of Missouri, by which the legislature was obliged to pass laws against the entry of free colored persons into the state. The north declared that this clause infringed upon the constitutional provision, according to which "the citizens of each state shall be entitled to all privileges and

immunities of citizens in the several states."[1] The slaveholders affirmed that free blacks were not to be considered as citizens "in the sense of the constitution." The northern congressmen opposed to this the fact that free blacks were citizens in some northern states, and that the clause in question spoke of "citizens of every state." The debate was finally lost in endless arguments over the meaning of the words "citizens" and "citizens of the United States," without reaching any result.[2]

[1] Art. IV., Sec. 2. Art. IV. of the articles of confederation contained the same provision, except that in it the common expression "all free inhabitants" was used.

[2] The discussion of this question more in detail belongs to the second part of this work. I will here refer only to Bates, On Citizenship, and to Livermore, Opinions of the Founders of the Republic on Negroes as Slaves, as Citizens, and as Soldiers, and will remark that in the same year in which the question was discussed in congress Attorney-general Wirt gave an opinion in which he says: "I am of the opinion that the constitution, by the description of 'citizens of the United States,' intended those only who enjoyed the full and equal privileges of white citizens in the state of their residence." Opinions of the Attorneys-General, I., p. 507. Wirt was a skillful jurist, but in this argument his reasoning is not only weak in the highest degree, but also illogical. In Bouvier's Law Dictionary, I., p. 275, is the statement that the constitution of the United States "does not authorize any but white persons to become citizens of the United States." This can be understood in no other way than that the constitution contains a clear provision to this effect, while in fact the only grounds for the assertion are some judicial dicta and decisions, which must be a stain on the annals of the United States forever, and from every point of view. Such a statement in a thoroughly scientific work is simply inexcusable, for either the choice of expressions is made with inexplicable carelessness, or party politics has crept into the book. It may also be noted that the edition of the Law Dictionary which I used was dated 1872, while in 1868 the 14th amendment was adopted, in which it is provided: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside." The editor, Childs, is, indeed, not to be blamed for failing to take notice of this amendment. The edition is actually that of the year 1867, and the date 1872 is only a mercantile trick, which is only too often resorted to by American booksellers.

The discussion of the question of law from other points of view was also fruitless. The slaveholders and state-rights party argued that not only were similar laws against free blacks in existence in other states, but that even in free states there were excluding laws, which concerned white citizens, and were doubtless unconstitutional, if this reproach could rightly be brought against the constitution of Missouri.[1] These assertions were partly well founded, but it did not follow from this that the clause was not inconsistent with the federal constitution.

As little tenable were the arguments by which it was attempted to prove the uselessness of any objection to this clause by congress. If it is unconstitutional—so the argument ran—then it is *eo ipso* null, and the decision of the supreme court of the United States will give it that effect. The overwhelming answer to this was that the clause, despite its abstract worthlessness, would actually be in force until it had been declared unconstitutional. Moreover, congress could not impose upon the judiciary the responsibility which the spirit of the constitution placed upon it; to it belonged the right of admitting new states, and upon it, therefore, rested the duty of deciding in such cases whether the conditions had been fulfilled which were necessary in order to make admission possible.

Although these points were of slight importance in comparison to those decided at the previous session, the debates—which lasted some weeks—were not less violent. The main reason of this was the well-known wish of a minority in the house to use this opportunity to overthrow the compromise. The slaveholders therefore did not venture to insist upon the alternative of an unconditional admission of the state or an unconditional rejection of the constitution that had been submitted. The senate first showed a disposition to find a middle course. This gave

[1] Compare Deb. of Cong., VI., p. 672, seq.

Clay an opportunity to lead back again into the path of compromise the house, which had already, thanks to the members hostile to compromise, rejected a motion to strike out the offensive clause. The two houses finally agreed to allow the state admission, provided its legislature "by a solemn public act shall declare the assent of the said state to the fundamental condition" that a right should never be deduced from this clause to pass a law and that a law should never be passed "by which any citizen of either of the states in this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States."[1] The legislature complied with this condition and therewith the Missouri conflict ended.

Three constitutional questions—two of them of cardinal importance—had been discussed. Men had fought shy of all three for the moment, and for this reason the originators of the compromise claimed that they had postponed the decision to the Greek calends. From a legal point of view, only one positive result had been reached, and this was on a point concerning which no legal question existed. The northern majority had indirectly renounced the right of congress to forbid slavery, as far as the territory lying south of the line of 36° 30′ was concerned, and it had agreed to this renunciation, because the southern minority had renounced, on its side, its claims to having the questions of law involved decided *now* in its favor,—provided its concrete demands, which it based upon its interpretation of the constitution, were complied with.

This was the true nature and the substance of the "compromise" which gave Henry Clay the first claim to the proud name of "the great peace-maker."

[1] Stat. at L., III., p. 645.

CHAPTER X.

Development of the Economic Contrast between the Free and Slave States.

The Missouri compromise produced no change in party relations. Monroe was re-elected president by all the electoral votes except one.[1] The "era of good feeling," which had begun to dawn just after the end of the war with England, now really commenced. The people, wearied by the feverish excitement of the last years, abandoned politics to the politicians, and the latter had to content themselves with routine business, since there was, for the moment, no burning question and no noteworthy opposition. But as yet a peace had not been made; only a truce had been concluded. New questions appeared, which sprang from the self-same roots as the earlier ones. Their germs could be traced back to the first year of the existence of the new constitution and their development had kept pace with the industrial development of the country. If their full importance was not yet appreciated, this could be partly ascribed to purely accidental circumstances and it was partly due to the fact that the opposition of principles in the industrial life of the two sections was less and less understood as it assumed a concrete form in the different industrial regions. A little while therefore elapsed before the party programmes became clear, and meanwhile the parties became more and more geographical ones. This time of transition was rich in strange transmutations in party-relations. Leading statesmen changed their positions in the most barefaced manner.

[1] Deb. of Cong., VI., p. 706.

During the first presidency of Madison, the bank question again arose, although it was still partially clad in the old party robe which it was soon to lose entirely. The national bank called into life by Hamilton, in 1791, presented a petition for the renewal of its twenty-year charter. Since the Republicans, who had not yet lost their old dislike of the institution, formed the majority of congress, the request was refused. At the moment the government did not need the support of the bank; the cry against the "monopoly of the money-aristocracy and the speculators" could reckon, now as twenty years before, upon a favorable reception with the masses; numerous capitalists were only waiting until this dangerous competition should be taken out of the way in order to start banks under state charters; and the constitutional objections brought forward in 1791 were again vigorously urged, especially by Clay.[1] The reasons were too many for the influence of the bank to overcome.

In three years, the picture had completely changed. One of the most effectual means which the Republicans used in the struggle against the Federalists had been the constant cry against high taxes. When they came into power they had to pay some attention to this in their financial management and, owing to the general prosperity, they could easily do this without causing any immediate damaging results. After the embargo-policy had begun to weigh heavily upon the whole industrial life of the nation, the weak points of the new financial system were soon apparent. The system itself, moreover, was not so different from that of Hamilton as the earlier utterances of Jefferson and his secretary of the treasury, Gallatin, might have led people to suppose. The war destroyed the plan. The reproach of the Federalists that a contest with the greatest maritime power of the world had been entered into wholly

[1] Deb. of Cong., IV., pp. 279, seq., and 311.

without preparation was truer from no point of view than from that of the finances. The heavier capitalists, who could have made the more important contributions, belonged for the most part to the dissatisfied states of the northeast, and the Republican party did not dare to vote taxes which would have laid the financial strength of the country under heavy contributions, for fear of injuring its popularity. So the government laboriously slipped along from month to month by means of small loans, which were placed only with the greatest difficulty, by the issue of treasury notes, and by other palliatives. All government securities quickly depreciated, gold and silver constantly became more scarce, paper money more abundant and more worthless, and the credit of the nation was smaller every day. The country was rich all the while, but the government was rapidly approaching bankruptcy.

Under these circumstances the project of a national bank was again brought before congress by the petition of New York. Eppes, the son-in-law of Jefferson, brought in a report as chairman of the committee on ways and means, Jan. 10, 1814, which denied to congress the power "to create corporations" within the limits of the states without their consent.[1] This was the first change in the party's position on the constitutional question. The original Republican doctrine was that congress could create no corporations at all. Calhoun at once sought to take advantage of this first breach made by the English cannon in the party principles. He moved the appointment of a committee to consider the propriety of founding a national bank in the District of Columbia.[2] The motion was agreed to without opposition, but the matter ended there.

Late in the summer of the same year affairs took a new turn. After the capture of Washington (August 24), all the banks incorporated by the states, with the exception of

[1] Deb. of Cong., V., p. 122.
[2] Ibid, V., p. 171.

those of New England, suspended specie payments.[1] The fearful confusion of all financial affairs which resulted from this bore hard upon the treasury. The secretary of the treasury, Dallas, declared in a report of Oct. 17, 1814, to the committee of ways and means: "The monied transactions of private life are at a stand, and the fiscal operations of government labor with extreme inconvenience. It is impossible that such a state of things should be long endured." And the sum and substance of his reasoning was that, "after all," a national bank was the "only efficient remedy."[2] At the end of the report he touched upon the constitutional question, and came to the conclusion that "discussion" must cease and "decision" become "absolute"; that the judgment of a congress must be recognized as settling the question; and that a national bank was "necessary and proper for carrying into execution some of the most important powers constitutionally vested in the government." The man who had said, in 1791 or 1798, that a member of a Republican cabinet would ever use such language, would have been looked upon as crazy. The crown was set to this change of parts, however, by the accompanying provisions: The capital of the bank was to be fixed at $50,000,000; the United States were to subscribe $20,000,000 of this; the bank was to be obliged to loan the United States $30,000,000; of the fifteen directors, five, the president among them, were to be named by the president of the United States; the bank was not to be taxed, except on its real estate, by the general government or the different states; the obligation of redeeming its notes with specie was not to exist, but other means were to be tried in order to prevent their depreciа-

[1] See the details in Ingersoll, Second War between the United States and England, II., p. 251.

[2] Life and Writings of A. J. Dallas, p. 236. Annals of XIII. Congress, p. 1285.

tion.[1] Even Hamilton would scarcely have ventured to lay such a plan before congress.

Congress at once took the proposal under consideration. Dallas urged speedier action, while he laid bare the whole financial misery of the government, without regard to consequences. In a second report of Nov. 27 he said: "The dividend on the funded debt has not been punctually paid; a large amount of treasury notes have already been dishonored; and the hope of preventing further injury and reproach in transacting the business of the treasury is too visionary to afford a moment's consolation. . . . Thus public opinion, manifested in every form and in every direction, hardly permits us, at the present juncture, to speak of the existence of public credit; and yet it is not impossible that the government, in the resources of its patronage and its pledges, might find the means of tempting the rich and the avaricious to supply its immediate wants. But when the wants of to-day are supplied, what is the new expedient that shall supply the wants of to-morrow?"[2] Jan. 17, 1815, Dallas summed up his accounts, and showed that "pressing" demands of the previous year, amounting to $13,186,929, must be satisfied, and that there were no means provided for doing so.[3] In the house of representatives Hanson of Maryland illustrated this general statement by giving some particulars. He affirmed that in the state department the bills for writing materials could not be paid; that the government "was obliged to borrow pitiful sums which it would disgrace a merchant of tolerable credit to ask for"; that the paymaster could not satisfy bills for thirty dollars, etc.[4] Grosvenor of New York added that $40,000,000 of national paper was

[1] Life and Writings of Dallas, pp. 238, 239.
[2] Ibid, pp. 245, 246.
[3] Ibid, p. 265.
[4] Deb. of Cong., V., p. 380.

in the market, and that it had sunk from eighty to sixty-five per cent.[1]

The necessity of creating some means of help in almost any way was plain to see from these facts. Yet the debates of congress spun out endlessly. Some Democrats remained true to the old party doctrine, and denied the right of congress to call into life a corporation of any sort whatever.[2] With the great mass of the Democrats, as well as of the Opposition,[3] the only question was over the details of the bill.

In the first weeks of the new year the two houses of congress finally agreed upon a bill. Madison sent it back to the senate, Jan. 30, 1815, with his veto, expressly stating that he "waived" the constitutional question.[4]

Three weeks later the administration was freed from its most pressing needs by the close of the war; but the deplorable condition of the finances[5] and the disturbance of foreign exchanges still continued, and men knew no way of extricating themselves from the difficulty, except by the establishment of a national bank. Madison, in his message of Dec. 5, 1815, recommended congress to once more take the question into consideration.[6] Calhoun, too, brought in a bill, Jan. 8, 1816, and defended it, Feb. 26, in a very long speech.[7] He did not touch upon the constitutional question, because, as he said, it would be "useless consumption of time" to discuss that any further. Clay took a prominent part in the debates and warmly supported the establishment of a bank. He justified him-

[1] Ibid, V., p. 383.
[2] Ibid, V., pp. 369, 401.
[3] Webster, Works, III., pp. 35–48.
[4] Statesman's Manual, I., p. 323.
[5] "Gold and silver have disappeared entirely. . . . Since 1810 or 1811 the amount of paper in circulation had increased from eighty or ninety to two hundred millions." Calhoun, Works, II., pp. 155, 158.
[6] Statesman's Manual, I., p. 330.
[7] Calhoun, Works, II., pp. 153–162.

self for this by saying that "the force of circumstances and the lights of experience" had made him see "the necessity" of attributing to congress this "constructive power."[1] Both houses agreed, at the end of three months, upon a bill, and on April 10 it received Madison's approval,[2] although in 1791 he had questioned the power of congress,[3] and in 1799, in his report to the legislature of Virginia, had mentioned the incorporation of the bank as one of the examples of the usurping tendencies of the federal government.[4]

The second national bank was also a purely Democratic creation, and the most noted Democrats had most to do with it. Necessity is the mother, not only of invention, but also of the interpretation of constitutions. Three years later, the supreme court of the United States gave an unanimous decision in favor of the constitutionality of a national bank.[5] Yet the bank question once more raised a fearful storm. In this, indeed, the two sections were not opposed to each other, but the economic differences came straightway into play, and the result was the strengthening of the power of the slaveholding aristocracy. But this last and most heated struggle belongs to a later period.

Of much greater and especially of much more permanent importance was the question of so-called internal improvements, that is, the question whether and how far the federal government was empowered to undertake or to aid the construction of roads or canals, the improvement of rivers and harbors, and the like. Even before the adoption of the constitution of 1787, negotiations had taken place between different states, in regard to undertakings of this

[1] Deb. of Cong, V., pp. 622, 623. Compare Benton's note, V., p. 627.
[2] Stat. at L., III., p. 266.
[3] Deb. of Cong., I., pp. 274, seq., 306.
[4] Elliot, Deb., IV., p. 550.
[5] M'Culloch vs. the State of Maryland. Wheaton's Rep., IV., p. 442; Curtis, IV., p. 432.

sort which would be to their mutual advantage. Madison pointed out in the Federalist (No. XIV.) how greatly the Union would be strengthened in the future in this way, and prophesied a rapid advance in this respect. Under the two first presidents, however, the fulfillment of these prophesies was impossible, because bringing order out of the financial confusion absorbed every exertion. During the administration of Jefferson, the idea was again brought up, and the building of the so-called Cumberland road was undertaken. But soon after the embargo-policy and the war with England turned the public attention and the national revenues to other affairs.[1] It was not until the beginning of the third period of the history of the Union that internal improvements became a fixed question, which occupied a permanent and prominent place in all political programmes. Up to this time, and for some time after, practically only one view prevailed, and this was that it was desirable or quite necessary to develop a comprehensive and systematic activity in this application of the federal resources. Jefferson, in his message of Dec. 2, 1806, directed the attention of congress to this point;[2] Madison came back to the question, as Calhoun said, "every year,"[3] and even Monroe favored the idea, although he drew the boundaries of its practical application vaguely and narrowly.[4] The only question was whether congress already had the necessary power, or whether it was necessary to first give this to it, by an amendment of the constitution. All the three presidents named held the latter view. The fact that they came from a slave state had no influence on this. They were "strict constructionists," that is, they found in the constitution no "express" grant of the right, and therefore thought that it could not exist. In the part of

[1] Compare Deb. of Congress, V., p. 676.
[2] Statesman's Mann., I., p. 191.
[3] Ibid, I., pp. 332, 335.
[4] Ibid, I., pp. 402, 491.

the message already mentioned which touched upon this point, Jefferson seems to have flatly denied the right. Madison had not yet wholly given up the position defended by him in 1796,[1] but it is impossible to say exactly how firmly he still held to it. In his message of Dec. 3, 1816, he spoke expressly of the "existing powers" of congress which needed only "enlargement",[2] and yet, on March 3, 1817, he vetoed an appropriation for the Cumberland road, on constitutional grounds, without pointing out how far the "existing powers" reached and wherein congress, in this particular case, had exceeded them.[3] He spoke quite clearly on this point, that the consent of the states, within whose limits internal improvements were to be undertaken by the Union, could not supply the needed constitutional power.[4] Monroe seems to have had exactly the opposite opinion on this point.[5] His view is still more hard to ascertain than Madison's, although he sketched it in his veto message of May 4, 1822, in tedious detail. In this message he affirms that the building of the Cumberland road had been "originally commenced and so far executed . . . under the power vested in congress to make appropriations," but that the present bill contained provisions which could not be justified by that power. Clay, however, declared it absolutely inadmissible to appeal to this particular right, because the appropriation of money was a result, not a cause. Monroe's message contains a long argument, which is wholly based upon this view.[6] It is difficult to

[1] See Niles' Reg., XL., p. 208.

[2] "I particularly again invite their attention to the expediency of exercising their existing powers and, where necessary, of resorting to the prescribed mode of enlarging them, in order to effectuate a comprehensive system of roads and canals." Statesman's Manual, I., p. 335.

[3] Deb. of Cong., V., p. 721.

[4] Compare Clay, Speeches, I., p. 69.

[5] See Statesman's Manual, I., p. 491.

[6] Statesman's Manual, I., p. 515, seq.

see where he found the reconciliation of the two directly contrary views.

At the same time, very vague ideas prevailed in congress on the constitutional question. Its discussion was marked by the same narrow legal spirit which had dictated Monroe's message and which now reasoned in circles and quibbled over words. The house of representatives, in 1818, took refuge behind the right of making appropriations. It decided, March 14, by ninety to seventy-five votes, that congress could "appropriate money" for the construction of roads and canals, but voted down, by eighty-four to eighty-two votes, a resolution that it had the right to "construct" post and military roads, and—by eighty-three to eighty-one votes—that it could "construct" canals for military purposes.[1] As soon, however, as men tore themselves loose from the literal reading of the constitution, a freer, more statesmanlike method of thought came into play. It was infinitely petty to raise a constitutional question at first and then to crawl out of the difficulty by the shallowest excuses; but the main point was that the majority of congress was always thereafter prevailed upon to make appropriations for internal improvements of national importance. The quibblers were overwhelmed with such a flood of arguments appealing to sound common sense that, despite all their efforts, they remained steadily in the minority. Clay asked whether the federal aims of the government could be reached in any other way than by the use of the federal resources. They could not answer, and it thrust aside all their hair-splitting objections. It was proved to them, by a multitude of examples, how greatly the essential ends of the Union had already suffered, simply because the resources of the Union had not been earlier applied in this way. And it was farther argued, with unanswerable logic, that their principles gave every state the right and

[1] Deb. of Cong., VI., pp. 121, 122.

the might to make the attainment of the main ends of the Union impossible. Despite the superfluity of spiritless bits of subtlety which were brought forward at every succeeding session of congress, the strife finally came to depend, in every instance, upon the simple question whether in the certain case a certain sum of money *should* be voted by congress. This was so plainly the only solution of the question, at once intelligent and corresponding to the pressing demands of circumstances,[1] that even the three presidents who denied the constitutional right signed a great number of bills, which had no other end save the appropriation of moneys for internal improvements.[2]

The most decided champions of the right and the most zealous defenders of its extended use belonged to the young states of the west.[3] The development of these states would necessarily remain far behind their capacity for development unless the general government, by constructing canals and roads and regulating river-courses, gave a strong impulse to immigration and created a profitable market for their products. Their own resources were not sufficient as yet for great undertakings, and, moreover, the proportionate co-operation of several states, needed in most cases, would have been an almost insuperable obstacle. But sufficient means of communication became, every year, a more pressing necessity. Even the lower classes of the population began to see that these must be created, even if this in-

[1] In response to repeated recommendations to lay a constitutional amendment before the states, the majority pertinently answered that they had no reason for doing so, since they did not doubt that congress already had the right. See the short but excellent discussion of the constitutional question in Kent, Comm., I., pp. 282–284.

[2] Jefferson's presidency: Stat. at Large, II., pp. 180, 359, 397 (three different appropriations), 524; Madison's: II., pp. 555, 661, 669, 671, 730, 820; III., pp. 206, 282, 315, 318, 377; Monroe's; III., pp. 412, 426, 480, 500, 560, 563, 605, 634, 728, 779; IV., pp. 5, 6, 23, 33, 71, 83, 94, 101, 124, 128, 132, 135, 227. See also IV., pp. 83, 151.

[3] Deb. of Cong., VI., p. 450; Clay, Speeches, I., pp. 182, 183.

volved, at the beginning, great sacrifices of money. The completion of the Erie canal contributed greatly to open the eyes of the masses to this fact. DeWitt Clinton had experienced the greatest hostility and unmeasured mockery on account of the work which has made his name immortal. Now, not only was its feasibility proved, but under its influence wildernesses were converted into fruitful, cultivated lands with magical rapidity. These and many other less striking experiences imbued the west with an enthusiasm for internal improvements, which afterwards brought it into peculiar discord with party orthodoxy. When the Democratic party split in two, it was sharply affirmed—though, indeed, the assertion was scarcely justified by the facts—that Jackson and Adams took substantially different positions on the question of internal improvements. Jackson was praised by the majority of his supporters, because he had given a strong check to the reckless mischief of the work of this sort carried on under Adams. But Missouri, which supported Jackson with spirited enthusiasm, declared with triumphant joy that this was a wholly groundless calumny, since more had been spent upon internal improvements during the first two years of Jackson's presidency than during the whole of Adams's administration.[1]

At first, the leading statesmen of the south went hand in hand with the west. Calhoun urged, in 1816, a plan for constant and systematic action, on the part of the general government, for the improvement of the means of intercommunication. On his motion, a committee was appointed in order to investigate whether it was advisable to devote the revenue derived by the government from the national bank to this end. December 23, 1816, he reported a bill, corresponding to this motion, which was

[1] See Niles' Reg., XL., p. 58 and XLII., p. 79. During Adams's administration, $2,083,331, and in 1829 and 1830, $2,501,590.

passed by eighty-six to eighty-four votes.[1] Lowndes took a similar position. In the vote of March 14, 1818, thirty southern representatives openly declared their belief in the right to appropriate money for the construction of roads and canals. Moreover, in December, 1824, Johnston of Louisiana submitted a resolution in favor of the right to make internal improvements.[2] Only by slow degrees was it clearly seen that this question too tended to a geographical consolidation of parties, although this tendency could never be fully carried out. The northwestern slave states, in which slave-industry was not the sole master, were deeply interested in having the general government help them to a closer union with the eastern and southern seaboard states. The northeast long remained, in part, in a cautious and even suspicious position. It had the least need of federal aid and had not yet so wholly outgrown its old jealousy of the west as to clearly see how greatly the industrial development of the west would be to its advantage. Moreover, the principle of state rights played a part in this question among the politicians who sought to make their way by servility towards the south. Thus, Van Buren brought in resolutions in December, 1825, which opposed the right of congress to construct roads and canals and favored the introduction of an amendment to the constitution which should define the limits of the congressional prerogatives in this respect in such a way as should "effectually protect the sovereignty of the respective states," and should insure to every state a more exact proportional part of the sums voted for internal improvements.[3]

In the south proper and in the remaining slave states, in which the slaveholding interest was supreme, a sectional opposition to the whole system developed itself very

[1] Deb. of Congress, V., pp. 676, 682, 711; Calhoun, Works, II., pp. 186–197.

[2] Niles' Reg., XXVII., p. 270.

[3] Deb. of Congress, VIII., pp. 364, 365.

strongly in course of time. The simplicity and crudeness of their industrial methods did not let them feel sufficiently the need of a great network of means of intercommunication. They were always glad to see the improvement of their harbors and of their rivers, by which the products of the west reached them, undertaken by the federal government, but yet the conviction curtly expressed by a Louisiana congressman as early as 1817: "Louisiana wants no roads!"[1] steadily gained ground. If they did not wish to go as far as this, they declaimed against the injustice with which everything was lavished upon the north, while the south went empty-handed away.[2] That the facts gave not the slightest support for these complaints made no difference.[3] The south never asked for facts when its presumed interests demanded that it should wail over the tyranny of the north. The legal grounds for the opposition were found, of course, in state rights, but as a general rule this doctrine was kept within comparatively narrow limits. Yet the legislature of Virginia suffered itself once (1826) to be carried away so far as to declare, by a verbatim quotation of the decisive sentences in the resolutions of 1798 and 1799, that the increase of duties for the purpose of protecting home industries and the passage of acts "preparatory to a general system of internal improvements" were "unconstitutional."[4]

When the Jacksonian wing of the Republican party came into power, the Opposition thought its time had come.

[1] Deb. of Cong., V., p. 710.

[2] The Charleston *Mercury* of Feb. 20, 1830, said: "The uniform practice of that system proves that the south, so far from partaking equally, has been totally excluded, and that the system itself has been wholly used as an engine for the oppression of the south and the enrichment of the north." Niles' Reg., XXXVIII., p. 255.

[3] See Niles' Reg., XXXVI, p. 168, and XXXVIII., p. 255, where there is an exact statement of how much of the sums voted for internal improvements up to the end of 1828 fell to each state.

[4] Ibid., XXX., p. 38.

This hope seemed justified when the president vetoed the Maysville road bill. But it soon appeared that Jackson only laid claim to the right to decide in each particular case whether or not the matter was properly a "national" undertaking and whether the use of federal resources was "expedient."[1] The constitutional question did not progress an inch. The strife continued with varying violence, but one internal improvement after another was undertaken, and the system was constantly pushed farther and farther.

The industrial contrasts of the free and slave states entered much more directly into the tariff struggle than into the questions of a national bank and internal improvements. In modern civilized countries free trade and protection have fought an almost constant battle, which dates much farther back than the origin of the North American republic. Here it began independently of slavery, as it has continued since the abolition of slavery. But yet the thirty-year tariff war (1816–1846) finds its explanation only in the form given by slavery to the industrial circumstances of the south. It is, in fact, "the expression of the struggle, in the sphere of economics, between freedom and slavery."[2] All the great questions upon which the inner contests of the republic from 1789 to 1861 were fought did not have their origin in slavery; but it was slavery which, in this as in all the others, made parties coincide with geographical sections.

The necessity of a common commercial law and of assured national revenues, which could be most easily raised by duties, had given the strongest impulse to the call of the convention at Philadelphia. One of the first questions, then, that came before congress for action was the regulation of duties on imports. The preamble to the

[1] Compare Niles' Reg., XL., p. 106.
[2] Kapp, Geschichte der Sklaverei, p. 171.

bill signed by the president July 4, 1789, provided that the customs and other taxes were to serve "for the encouragement and protection of manufactures."[1] Repeated reference was made in the debate to this side of the question. Fitzsimmons of Pennsylvania demanded protection for the makers of tallow candles. Hartley, of the same state, expressed himself as generally in favor of protective duties, and Madison recognized the justice of the demand to a certain degree. Clymer of Pennsylvania went farthest, and declared that the protection of home industries by duties was a "political necessity." On the other hand, Bland of Virginia, and especially Tucker of South Carolina, demanded that in deciding upon duties only the revenue to be obtained should be considered, because under a protective system all are taxed for the benefit of a few. Partridge and Ames paid especial attention to the shipping interest, and opposed the taxation of hemp and rope.[2] Here the party-grouping of the next five-and-twenty years is already indicated. Madison expressed his especial satisfaction over the fact that no geographical division had become noticeable;[3] he said that it was plain that different views about the propriety of a protective policy prevailed in all parts of the Union. The constitutional question was not once raised. But then at least no one thought of taxing imported wares simply for the purpose of protecting existing American manufactories from foreign competition, or, indeed, for the sake of making it possible, for the first time, to establish American manufactories. Men only wished to see the duties necessitated by the needs of the treasury laid in such a way that they would actually serve to encourage American industry. A large majority, at the moment, wished that this should be done. Hamilton was directed by the house of representatives to prepare

[1] Statutes at Large, I., p. 24.
[2] Deb. of Cong., I., pp. 25, 26, 27, 35, 36.
[3] Deb. of Cong., I., p. 55.

a report upon "the means of promoting such [manufactures] as would render the United States independent of foreign nations for military and other essential supplies."[1] Hamilton prefaced his long report with the remark that the propriety of a protective tariff, in the sense already given, was now "pretty generally admitted," and then defended the view himself with great ability.[2]

During the war with England, the question assumed a new phase. Thanks to the European war troubles, the American shipping business, which was mainly in the hands of New Englanders, received a great impulse, until the embargo policy began to lay fetters on its further development. Manufacturing industry, which quickly revived when the war closed the European sources of supply, offered a certain compensation for this. The financial difficulties of the government had already, in 1812, compelled a doubling of all the customs, with a further tax of ten per cent. on goods imported in foreign ships.[3] In order to make this heavy imposition seem more endurable to the discontented New England states, they were comforted with assurances that this proviso was to give an impulse to their own peculiar industry.[4] The prophecies of the comforters proved true, but only as long as the abnormal state of things continued.[5] The end of the Napoleonic wars and the peace of Ghent threatened the ship-owners as well as the manufacturers with speedy ruin. The seas

[1] Dallas' report of Feb. 12, 1816. Niles' Reg., IX., p. 441.

[2] Ham., Works, III., p. 192.

[3] Statutes at Large, II., p. 768.

[4] Webster, Works, III., p. 230.

[5] Randolph wrote, Dec. 15, 1814, to a New Englander: "Of all the Atlantic states you have the least cause to complain. Your manufactures and the trade which the enemy has allowed you have drained us of our last dollar." Garland, Life of Randolph, II., p. 60. Ingham of Pennsylvania estimated, in 1816, the capital invested in manufactures within the last eight or ten years at $100,000,000. Debates of Congress, V., p. 628.

were again free to all ships, and England threw an oversupply of goods upon the American market, in order to destroy the home competitors before they acquired a firm footing. Congress was therefore overwhelmed with petitions for aid from persons engaged in manufacturing pursuits, who complained the more earnestly because, according to the law of July 1, 1812, the double duties were to cease one year after the conclusion of peace. The failure of many manufacturers gave proof that the young industries could really be maintained only by artificial aid. But this could scarcely be given without sadly interfering in many ways with the interests of the ship-owners. The New England states were therefore at odds with one another on the tariff policy to be followed. In New Hampshire and in Massachusetts, to which Maine then belonged, the shipping interest prevailed; in Rhode Island and Connecticut the manufacturing interest. The agricultural states held fast to the latter. The south wavered, for it had not yet learned to see that slave labor and manufacturing on a large scale exclude each other.

Under these circumstances a sort of compromise was brought about in 1816. The report of secretary of the treasury Dallas emphatically advocated protection to home industry by high duties, especially in the case of those goods which could be produced in sufficient quantity in the United States.[1] He wished to see the goods which would be produced, beyond question, in the United States subjected to a light revenue tax, and those which must be in the main imported placed under medium duties. The bill which was introduced by Lowndes of South Carolina, as chairman on the committee on ways and means, adopted this classification, but in general agreed with the fundamental theory that the raising of revenue should be the leading principle in the calculation of the duties. The

[1] Niles' Reg., IX., pp. 436–447

principle of protection was only incidentally recognized here. The makers of cotton and woolen wares, who had been the especial subjects of congressional care, had to satisfy themselves with a duty of twenty-five per cent., which was to be lowered to twenty in three years. It is characteristic of the position of parties at that time that Calhoun appeared as a champion of protective duties, especially in reference to cotton and woolen manufactures.[1] He was of opinion that "things naturally tend at this moment" to the "introduction of manufactures."[2] Webster stood up for the opposite side. Louisiana demanded protection for the sugar planters.[3]

This compromise satisfied nobody. The agitation for higher duties was at once begun again. The tariff adopted by the house of representatives in 1820, but rejected by the senate, bore the mark of an undisguised protective system. The ship-owning states took, in part, the position they occupied in 1816. Whitman of Massachusetts was among the most violent opponents of protection.[4] In all things else parties had evidently already neared the position which they finally occupied.[5] The south had gained clearer views of its interests, and the young west strove for the leadership on the side of protection. Yet Henry Clay, the father of the so-called "American system," still showed some foresight in his expressions. He was on his guard, lest manufacturing should be given unreasonable encouragement by protective duties.[6]

Defeat did not discourage the protectionists, but rather spurred them on to redoubled activity. Other causes, which were in great part of a purely personal nature, con-

[1] Calhoun, Works, II., pp. 163, 164; Deb. of Cong., V., p. 640.
[2] Calhoun, Works, II., p. 169.
[3] Debates of Congress, V., p. 632.
[4] Clay, Speeches, I., p. 158.
[5] See Niles' Reg., XVIII., p. 169.
[6] Clay, Speeches, I., p. 155.

tributed to split the Republican (Democratic) party into the Democrats[1] and the National Republicans (Whigs), but the tariff was the leading political question for a series of years. The load which had weighed down all industrial life during the last few years put a priceless means of agitation into the hands of the protectionists. Under the leadership of Clay they availed themselves of this with such dexterity that Monroe yielded to their pressure, and recommended, in his messages of Dec. 2, 1822 and Dec. 2, 1823, a revision of the tariff in behalf of protection.[2] Strengthened in this wise, the protectionists again began the fight in 1824. Its character was from the first markedly different from that of the earlier debates. The constitutional question, which had hitherto been raised quite incidentally and in the form of doubts, was now sharply urged. The constitution gives congress simply the power "to lay and collect taxes" and "to regulate commerce with foreign nations."[3] Nowhere in the instrument is there a limitation or any sort of qualification in regard to duties, except that they must be the same for the whole Union. The party which had such an abhorrence of every "construction" of the constitution and of all "derived powers" saw itself, therefore, again obliged to use the art of construing in a really wondrous manner, in order to settle the legal question.[4] The right of taxation, they affirmed, had only been granted to congress in order to obtain the money needed for the legitimate aims of the government. To levy a tax for any other purpose, or to

[1] The official name, so to speak, of the party had been, up to this time, Republicans.

[2] Statesman's Manual, I., pp. 448, 458.

[3] Art. I., Sec. 8, § § 1, 3.

[4] As far as this was concerned Madison stood unconditionally with the protectionists. Niles' Reg., XLIII., Suppl., pp. 33–37. Jefferson took practically the same ground in his reports on the fisheries (Feb. 1, 1791) and on the limitations of trade (Feb. 23, 1793). Compare also, his letter to Dr. Leiper, Jan. 21, 1809, Works, V., p. 416, seq.

fix a customs duty imposed for such a purpose in any other way than that dictated by an exclusive consideration of the needs of the treasury, was, they said, beyond the power of congress. The first condition precedent to the Union, the equality of all its members, would be overthrown if all were burdened for the benefit of a few. It would be madness to authorize congress to fatten northern manufacturers on the life-blood of the south.

This was the real party-cry and it was now uttered in all distinctness for the first time. Randolph called attention, with natural boastfulness, to the fact that Massachusetts, now as at the time of the Revolution, stood side by side with Virginia in the cause of freedom. And besides Massachusetts, Maine and New Hampshire went with the south.[1] But yet it was the fashion to decry the protective system as an attempt of selfish New England, and the south sought to monopolize the rôle of the maltreated victim. Randolph dwelt with bitter satisfaction upon the fact that the south stood together in solid phalanx.[2] Of course, the geographical division of parties was not precisely in accordance with his view. Clay himself represented a state which is commonly spoken of as belonging to the south. The inhabitants of the plantation states[3] were of course to a man opponents of protection, and this was amply sufficient to give the strife the hatefulness and perilousness of a sectional struggle. They were, indeed, still half in doubt whether every possibility of manufacturing development had been taken away from them by slavery, but they appreciated the fact that they had no sort of manufactures, and showed no inclination whatever to venture upon man-

[1] Deb. of Cong., VIII., pp. 10, 16. Webster, Works, III., p. 229.

[2] "I bless God that in this insulted, oppressed and outraged region, we are, as to our counsels in regard to this measure but as one man; that there exists on the subject but one feeling and one interest." Deb. of Cong., VIII., pp. 10, 15.

[3] The sugar and indigo planters always formed an exception.

ufacturing enterprises. They had only their staple exported articles and depended for every other thing upon the rest of the world. They could therefore obtain no direct compensation for the heavy burdens of a protective tariff, and they either wholly failed to recognize the indirect advantages which accrued to the whole Union from the protective system, according to its champions, or considered them of a worth which could bear no sort of comparison with the burden of taxation. They rightly understood that the promises of a speedy lessening of the load would only be fulfilled when their opponents reconciled themselves to a partial abandonment of their main principle. The latter evidently thought nothing of their own promises. Tyler of Virginia had foretold, as early as 1820, that the manufacturers would have to come back again and again with increased demands.[1] This explains the sharpness of speech noticeable from the first in the debates of the representatives of the plantation states. They held it necessary to use at once the threat of a full enforcement of state sovereignty as a radical check to all displeasing measures of the general government. Randolph spoke with more than customary emphasis of "the might" of the south and reminded his hearers that under every constitution "by an unwise exercise of the powers of the government, the people may be driven to the extremity of resistance by force."[2] Such pregnant words had been let fall in congress too often to frighten the majority of members, as long as it was not known whether there lay behind the words an earnest, determined will. The bill passed both houses, in the lower, indeed, by only one hundred and seven to one hundred and two votes, and in the senate by twenty-five to twenty-one.[3]

[1] Deb. of Cong., VI., p. 617.

[2] Ibid, VIII., p. 11.

[3] Benton, Thirty Years' View, I., p. 34; compare Niles' Reg., XXVI., p. 113.

The plantation states used this scanty majority as a convincing answer to the accusation of the protectionists that the south sought to overthrow, by threats, the highest fundamental principle of a republic, the rule of the majority. In a political organization of the peculiar composition of the Union, they objected, it is not only imprudent, but unjust, to allow a majority of half a dozen votes to be sufficient to decide a question of this nature and of such deep significance, when the separation of economic interests is so sharply marked by a geographical line. There was truth and important truth in both views; but interest was so overpowering on both sides that men were incapable of a sober consideration of the just complaints of their opponents. The battle continued and assumed a still more bitter and critical character, inasmuch as the manufacturing interest began to identify itself with the National Republicans or Whigs. Before this, the protectionists had always brought forward their demands at the time of the presidential election, and now their leaders sought to fully entwine it with this question, in which, every four years, all the passion and the hate of American party politics are summed up. Both parties were carrying on the agitation among the masses of the people with energy and system, when the request of the woolen manufacturers and woolgrowers for more effective protection gave, in 1828, an impulse to a new protectionist revision of the tariff. South Carolina and Georgia formed the extreme wing of the anti-tariff party, while Webster, now in league with Clay, stood at the head of the protectionists. Webster justified his desertion to the other camp by explaining that the adoption of the tariff of 1824 had given the country to understand that the protective system was to be the permanent policy of the nation; New England had guided itself by this decision and was now obliged to demand protection for the manufactures which had arisen in consequence of

this. This justification was not adapted to weaken the opposition of the plantation states. Whether or not the protective system had been recognized as the permanent policy of the country, they could only lose by giving up. According to their views of the working of the system, they were, as Hamilton of South Carolina expressed it, "coerced to inquire whether we can afford to belong to [such] a confederacy."[2] They could not shut their eyes to the fact that they were going backwards, in an economic sense, despite the increasing demand for cotton and their other staple products, and they painted their own decline in the most glaring colors, because they ascribed it wholly to the tariff and the other features of the economic policy of the general government.[3] This was the way to handle the theme in order to drive the southern people to frenzy, for if this assertion was true, they were practically given the alternative of putting an end at any cost and by all means to that policy or of abandoning themselves, with torpid resignation, to inevitable ruin. But yet these complaints of the retrogression of the south gave the north a trump card, which it did not fail to play. Not the tariff—said the northerners—lets "the fox house himself where the hearthstones of your fathers stood": it is slavery that has turned fields which bore rich fruit twenty and thirty years ago into deserts. In the heat of the conflict, many a word slipped from southern lips which proved the justice of this reproach.[4] But for the very reason that this was well founded, it kindled the strife to a more fiery glow, so that slavery was again directly pointed out as the demon which sowed discord between north and south.

[1] Webster, Works, III., pp. 228–247.

[2] Deb. of Congress, X., p. 112.

[3] Niles' Reg., XXXV., p. 205; Benton, Thirty Years' View, I., pp. 98, 99, and in many other places.

[4] See the eighth paragraph in the protest of the legislature of South Carolina. Niles' Reg., XXXV., p. 309.

The loss of the greater part of those who had been up to this time its allies in the north made the defeat of the south a certainty if its opposition was managed in the same way as in 1824. The representatives of South Carolina therefore labored to bring about common action by all the anti-tariff states in accordance with a definite programme. The discussions in their meetings for counsel showed that matters must come to a decided crisis if everything went according to their wishes.[1] Hamilton, the future governor of South Carolina, already weighed the possibility of an attempt to execute the law by force, and declared that the idea of a man's really thinking of this was "an absurdity not to be heard of." No conclusions could be arrived at, and still less was it possible to succeed in forming a common plan of operations with the other members who were of the same general opinions.

A part of the press outdid even the members of congress in the violence of its opposition as well as in the scope of its projects. Thus the *Southron* and the Columbia *Telescope*, for example, advised the calling of a congress of the Opposition states, an idea, the meaning of which was generally recognized, but which had to be dropped because discontent, at any rate in Georgia, had reached such a height that the extreme proposals of South Carolina might have been agreed to.[2] There was also no lack of moderate counsels on the part of the press—counsels which condemned all unconstitutional opposition.[3]

The legislatures took up the matter. The South Carolina legislature did so most vigorously. Protests were the order of the day. Every member considered himself bound to introduce a series of resolutions which strove to outdo

[1] Compare the declarations called forth from different members by the Hayne-Mitchel debate. Niles' Reg., XXXV., pp. 183-185, 199-203.

[2] Ibid, XXXIV., pp. 300, 301.

[3] Compare the numerous extracts in Niles' Reg., XXXIV., pp. 352-356.

each other in bitterness.[1] Passionate speeches were, moreover, made at meetings in different districts, at banquets and on similar occasions. Men especially delighted in toasts, in which eloquence went far beyond the bounds of good taste, and threats extended to the farthest limits of the "moral high treason" so greatly blamed a short time before.

The terrible earnestness of all these demonstrations lay in the theories of constitutional law upon which they were based. They rested wholly on the Virginia and Kentucky resolutions, to which, indeed, the legislature of South Carolina directly appealed.[2] The Colleton district declared: "We must resist the impositions of this tariff . . and follow up our principles . . . to their very last consequence."[3]. Resolutions introduced by Dunkin in the legislature gave the legal formula by which this was to come to pass in a way commensurate, so to speak, with the matter. He demanded in this and in all similar cases the convocation of a convention of the states in order to nullify the laws objected to.[4]

Simultaneously, all sorts of other means were brought into play in order to nullify the tariff practically if not legally. Numerous leagues were formed, which bound

[1] A passage in the resolutions introduced by Cook in the legislature of South Carolina deserves to be quoted, because it is a sign of the spirit in which the radical wing of the state-rights party began to look upon the relation of the states to the federal government. It says: "When a state solemnly protests against an act of congress because it is an usurpation of power, congress ought forthwith to call a convention of the states to decide upon it and suspend its operation until the sense of the states be taken, and if congress, on the application of a state or states, should refuse to call such conventions, neglect to suspend its operation or not immediately repeal the act on the grounds of its unconstitutionality, it thereupon becomes null and void to all intents and purposes." Niles' Reg., XXXV., p. 306.

[2] Ibid, XXXV., p. 206.

[3] Ibid, XXXIV., pp. 288, 290.

[4] Ibid, XXXV., p. 305.

themselves not to buy from the north and west any goods which were protected by the tariff from foreign competition, but instead to use wares of native manufacture. Even in South Carolina, Georgia and Alabama, the embitterment against the north produced a momentary possibility of building up a manufacturing industry of their own.[1] But it had to be admitted that it would be at least very doubtful whether much could be done by individuals in this way, and an energetic display of state power was therefore demanded. Prohibitory duties were thought of and other projects were broached, which were also in direct opposition to the constitutional provisions in art. I., sec. 10, §§ 1 and 2. It was therefore only talked of, and this did not avail to crown the policy of terrorism with any practical result. The new tariff became a law and the collection of the duties was nowhere opposed. But the accomplishment of the fact did not bring back repose to the land.[2] The outward alarms were weaker for a while, but the agitation was so much the deeper. It was felt on both sides that the decision would come with the next war. The protectionists soon recognized the fact that Tyler's prophecy was still always true and South Carolina prepared herself to test the efficacy of her constitutional means of protection.

[1] Niles' Reg., XXXV., pp. 15, 48, 60, 62, 63, 64, 83.

[2] Part of the events mentioned above happened after the adoption of the tariff.

CHAPTER XI.

The Panama Congress. Georgia and the Federal Government.

After the Missouri compromise, the slavery question apparently slept for some years. Its intimate alliance with the tariff-struggle was only understood by slow degrees, and other problems, which would have brought forward the opposing principles and interests involved in it, did not crop out for the moment. The politicians felt no inclination to artificially create such problems. There were, indeed, Catilines in the south even now, but they were not of such extraordinary talents that they would have ventured to play with this fire, when its ravaging strength had just been so powerfully shown. The justification of the complaints which became so current, later, among all parties and were already becoming loud here and there, that the apple of discord had again been thrown among a people longing for rest by ambitious men, fanatics and demagogues, reduces itself, everything considered, to a minimum. The best proof of this is that slavery, despite the silent agreement of the politicians to try to shun every mention of it, often suddenly and unexpectedly became the determining element in questions which in and for themselves stood in no sort of relation to it.

The most important instance of this sort, which had, indeed, no practical results, but sharply sketched the situation, happened at the beginning of the presidency of the younger Adams.

As early as 1821 the idea of forming a close connection between the Spanish colonies in Central and South America, then engaged in revolution, had been suggested by

Colombia.[1] A few months before their independence was recognized by the United States,[2] a treaty was negotiated between Colombia and Chili (July, 1822) in which a convocation of a congress of the new republics was contemplated. "The construction of a continental system for America," which should "resemble the one already constructed in Europe," was the apparent project of these two powers.[3] The idea ripened very slowly. It was not until the spring of 1825 that the meeting of the congress in Panama was so far assured that the ambassadors of Colombia and Mexico verbally inquired of Clay, who was then secretary of state of the United States, whether an invitation to be represented at the congress would be acceptable to the president.[4] Adams had an answer sent, worded in his own cautious way, to the effect that he first wished to be informed concerning the topics agreed upon for discussion, the nature and form of powers to be given to the "diplomatic agents," and the "organization and method of procedure" of the congress. The ambassadors of the two mentioned states, in their formal letters of invitation, gave very unsatisfactory assurances on these points.[5] Clay referred to this in his answers, but at the

[1] Webster, Works, III., p. 195; report of the senate committee on foreign affairs of Jan. 16, 1826; Niles' Reg., XXX., p. 103. All the documents referring to the congress of Panama, as far as the United States are concerned, can be found in the State Papers (Foreign Relations) and also in Niles' Reg., Vol. XXX. Part of them are printed in Elliot, American Diplomatic Code, II., p. 648, seq.

[2] Monroe recommended the recognition to congress in a special message of March 8, 1822, (Elliot, Diplomatic Code, II., pp. 640–642; compare also Adams's dispatch of May 27, 1823, to Anderson, the ambassador of the United States in Colombia) and this was ratified by both houses by the almost unanimous appropriation of the money needed for the creation of embassies. (May 4, 1822, Statutes at Large, III., p. 678.)

[3] Report of the senate committee, Jan. 16, 1826.

[4] Clay's report of March 14, 1826, to the house of representatives.

[5] Salazar (the ambassador of Colombia) to Clay, Nov. 2, 1825, and Obregon (the ambassador of Mexico) to Clay, Nov. 3, 1825.

same time declared that the president had decided to accept the invitation "at once."[1]

When the question of sending representatives to the congress came up in the senate, and later in the house, the Opposition tried to make capital out of this piece of inconsistency. It was too meaningless in itself to deserve any censure. Its interest was due simply to the fact that it lifted for a moment the veil of the future.

Adams, both as a statesman and as an individual, resembled his father in many respects. He was of an earnest, deeply moral nature, and knew how to stamp this character upon his administration in a degree which, compared with all the following presidencies, makes an extremely favorable impression. Political ambition was one of his most prominent characteristics; but this did not degenerate in him, as it did in his father, into morbid vanity. He did not know what the fear of man meant. In the struggle for the right of petition, which he afterwards carried on alone in the house of representatives for a long while, he found a certain satisfaction in driving to frenzy, by his biting satire, the representatives of the slaveholding interest, who then held almost absolute power. But his scorn for all the arts of demagogues not infrequently turned into rudeness, and his firmness into obstinacy; and yet, at the same time, under certain circumstances, he let himself be influenced too much by others. During his long diplomatic service he had acquired a habit of prudent examination, which sometimes led, in the more difficult questions, to irresolution and vacillation. This is, however, partly due to the fact that sober, statesmanlike thought and idealism were not properly fused together in his nature. The former decidedly outweighed the other; but yet the latter made itself felt, and not infrequently in a destructive way.

[1] The answers are dated Nov. 30.

Ingham of Pennsylvania read in the house of representatives two newspaper articles, which treated the request for participation in the Panama congress in exactly different ways. He stated that it was as good as certain that the article opposing this had proceeded from or been inspired by Adams, and the one in its favor by Clay.[1] He gave no proof for the assertion. It must therefore remain a question whether his zeal in opposition did not lead him to put forward groundless suspicions as facts. But it may be considered as sufficiently proved that Adams at first looked on the project much more coolly than he did afterwards, and that Clay was not without influence upon this change of opinion.

Clay had rendered great services to the young republics. He had been the most determined champion of their affairs in the United States. He had at first demanded with stormy energy that sympathy for them should not exhaust itself in worthless words, but take the form of acts. No defeat frightened him from the field, and it was largely due to his constant efforts that their independence had been already recognized by the United States in the spring of 1822. His speeches on these questions are among the most brilliant productions of his genius. His most notable characteristics, as well as his greatest weaknesses, appeared in them in the clearest light. His enthusiasm lifted him, with a bold sweep, to a height from which he looked down with compassionate impatience upon the petty politicians who, in their routine wisdom, could not see the forest because of the trees around them. The knowledge that America was an integral part of one civilized world dawned in his mind. If his agitation was based on the sharp emphasis which he laid on the opposing positions of America and Europe, yet the fact does not contradict this assertion. Exactly because he did not, in his poli-

[1] Debates of Congress, IX., pp. 198–200.

tical reasoning, lose sight of Europe, he strove for the consolidation of America and insisted upon its peculiar characteristics and its specific interests. The attempt of the Holy Alliance to fetter together Europe in behalf of the interests of absolute monarchy made it seem to him desirable, if not necessary, to oppose to this "unholy league" a union of the states founded upon the "American principle" of popular sovereignty. The authorship of this idea of a solidarity of the interests of all America, resting not only upon the geographical proximity of states, but mainly, indeed, upon the identity of their fundamental political principles, belongs, not exclusively, but yet chiefly, to Clay. According to his plan this solidarity of interests was to assume concrete form in the Panama congress. It would there be legally adopted so far as this fundamental political principle had obtained practical recognition. From this firm standpoint he hoped to see the great plan he had announced as early as 1820 realized—the establishment of a "human-freedom league in America," in which "all the nations from Hudson's Bay to Cape Horn" should be united, but not simply for the sake of remaining in permanent contrast to Europe, tortured by despots. He declared that through the power of example, through its moral influence, the American system would ever extend farther and farther, so that a point of union, a haven for freedom and lovers of freedom, would be formed upon the soil that was wet with the blood of the Revolutionary forefathers.

Friedrich Kapp finds in these ideas the "far-seeing view of a clever statesman," and apparently makes the slaveholders alone responsible for the fact "that Clay's high aims remained only pious wishes."[1] The facts do not, in my opinion, fully justify this judgment; too much responsibility is laid upon the slaveholders. Even without their opposition Clay's ideas could not have been

[1] Geschichte der Sklaverei, p. 193.

realized. Under the actual circumstances the ideas were too clever, and so not truly statesmanlike. No one will deny Clay's gifts for statesmanship; but he yielded too readily and too earnestly to the lead of his vigorous fancy. He had to thank it for many fruitful thoughts, but it often prevented his weighing the nature of his plans and the chance of their realization with the necessary soberness The vast extent and the uncivilized condition of the young west, whose most distinguished representative he was, mirrored itself strongly in his thoughts. He dazzled his hearers by the splendor of his projects, won them a hearing by his fiery, alluring eloquence; and helped himself and his followers over the difficulties in the way by a glittering sketch of the consequences which must result from the development of the ideas. His fancy's flight was towards the sun, but it bore him so high that mountains and valleys began to melt into a plain, and the foot resting on earth stepped uncertainly and insecurely. Moreover, his boldness in decision and action, when every-day circumstances created great and momentous problems that imperatively demanded a thorough solution, did not correspond with his boldness in planning. At such times he could not even entertain an energetic wish for a solution, partly because he did not subject the question of its necessity to proper inquiry, and partly because traditional dogmas and a lack of moral courage made him start with the supposition of its impossibility. Bargaining was then the sum of his wisdom, and his activity degenerated into obstinacy in chaffering. An idealist who wasted the best part of his creative power in impracticable projects, and a politician who was an unsurpassable master of the art of solving great and unavoidable problems by little expedients,—these are the most notable traits in Clay's political character. They do not give his picture in full, but they mark the tendency of his influence upon the fate

of the Union. His other qualities and achievements did not lift him above the level of ordinary politicians.

In his speech of March 24, 1818, "on the emancipation of South America," he denied the justice of the assertion that the South Americans were too ignorant and too superstitious "to allow of the existence of a free state." He questioned the ignorance, but yet denied that ignorance necessitated incapacity for self-government. That, he declared, was the doctrine of the throne, and conflicted with the natural order of things.[1] The South Americans, he said, "adopt our principles, copy our institutions, and in many cases use both the language of our Revolutionary ordinances and the thoughts therein expressed." These were facts, indeed, but this blind imitation of the "great example" surely pointed much more to incapacity than to capacity for intelligent self-government. If the Holy Alliance was to be opposed by a league of free states of a sort that could exist, it was self-evidently a condition precedent that the members of the league should be in harmony with the suppositions upon which the league was to rest. It was not enough that they were not ruled by kings; they must be in truth republicans, that is, must have put the theory of popular rule into execution in a rational manner. This was not the case, to a sufficient degree, among the younger free states. On this account Clay's hopes would doubtless have remained beautiful illusions, even if the Opposition had not delayed the decision so long that the ambassadors of the United States reached Panama too late. It is another question whether Adams's more modest wishes might not have been partly fulfilled.

The secretary of state had known how to impart to the president something of his own enthusiasm, which let him see in the Panama congress the boundary stone of a "new

[1] Clay, Speeches, I., pp. 89, 90.

epoch of the world's history.'"[1] Adams's message to the house of representatives fairly surpassed Clay's effusions in pompous phrases. He doubted whether such a favorable opportunity for subserving "the benevolent purposes of divine providence" and dispensing "the promised blessings of the Redeemer of mankind" would again be presented to the United States in centuries.[2] With this tasteless piece of declamation, however, he satisfied his artificially-kindled enthusiasm. The message now begins to treat, in a measured, statesmanlike way, of the questions which the president especially wished to see discussed by the congress and in regard to which he thought the attainment of advantageous results not impossible. He discusses, first and most thoroughly, the conclusion of friendly and commercial treaties, on the basis of complete reciprocity, on the footing of the most favored nation, "the abolition of private war upon the ocean," and limitations of war-usages, in regard to contraband-of-war and blockade, in such a way as to favor neutral trade. After explaining, with great minuteness, his position on the Monroe doctrine and the way in which he wishes to see it brought before the congress and treated by the latter, he touches upon

[1] Instructions of May 8, 1826 to the ambassadors. Niles' Reg., XXXVI., p. 71.

[2] "But objects of the highest importance, not only to the future welfare of the whole human race, but bearing directly upon the special interests of this Union, will engage the deliberations of the congress of Panama, whether we are represented there or not. Others, if we are represented, may be offered by our plenipotentiaries for consideration, having in view both these great results, our own interests and the improvement of the condition of man upon earth. It may be that in the lapse of many centuries no other opportunity so favorable will be presented to the government of the United States to subserve the benevolent purposes of divine providence, to dispense the promised blessings of the Redeemer of mankind, and to promote the prevalence, in future ages, of peace on earth and good will to man, as will now be placed in their power, by participating in the deliberations of this congress." Niles' Reg., XXX., p. 55.

Hayti and Cuba with diplomatic prudence,[1] and finally expresses the opinion that an effort should be made on the part of the United States to obtain the recognition of "the just and liberal principles of religious liberty."[2] The message ends with a sort of apology for the exaggerated hopes expressed in its beginning. Adams repeated, indeed, that the matter was one of "transcendent benefit to the human race," but yet called the meeting of the congress "in its nature, a measure speculative and experimental," and declared that it would perhaps be "too sanguine" to expect the realization of "all or even any" of its grand aims.

If Clay reveled in Quixotic allusions and if Adams, too, had been drawn into his intoxication, the Opposition in both houses of congress went just as far on the other side. The zeal shown was, indeed, in great part a sham. The Panama mission was not the ground of the opposition, but merely gave this the opportunity of introducing itself with effect as an Opposition party.[3] To this was due the boundlessness of the attacks by which congressmen made themselves still more ridiculous than the secretary of state had made himself by the boundlessness of his hopes. Adams rightly called the idea and the plan "benevolent and humane." But the Opposition was so crazed in its blind zeal, that, out of policy, it had not the slightest word of approval

[1] I shall return to these three points.

[2] Adams had already urged this view, as secretary of state, in his instructions to Anderson, May 27, 1823. (Elliot, Dip. Code, II., p. 653.) It appears, indeed, from the message that he at first thought only of assuring to citizens of the United States the free exercise of their religion, which had already been secured to them in the treaties with Colombia and Central America.

[3] "An opposition is evidently brewing. It will show itself on the Panama question." Webster to J. Story, Dec. 31, 1825, Webster, Priv. Corres., I., p. 401. Brent of Louisiana said in the house of representatives: "Can an Opposition to the present administration be so prejudiced as not to see that this measure recommended by the president is for the protection of our southern interests?" Deb. of Congress, IX., p. 105.

for any point whatever of the whole scheme. Every part of it was raked over the coals and the most innocent portion was held up as the source of sure destruction. In the senate, as well as in the house, a morbid conscientiousness in the fulfillment of pretended neutral duties was displayed.[1] All proofs drawn from international law against the alleged danger were fruitless, since men would not be convinced. They constantly argued on the supposition that representation in the congress involved an active participation in all its debates and decisions. A breach of neutrality might easily be deduced from this, for Spain still maintained all her claims to her former colonies, and the latter had placed upon the programme of the congress different questions directly relating to the war with the mother country. This was carrying the dishonesty of the conflict to an extreme. From the time of the first informal negotiations, it had been provided for and agreed to by both sides at every opportunity, and in the most express words, and it was clearly understood, that the neutrality of the United States was to be in no way endangered. Adams pointed this out in his messages to congress and added, moreover, that the participation of the representatives of the United States was "wished" only in those discussions which did not bear upon the war of the other powers with Spain.[2]

All the other points were treated in the same way as this. Adams brought forward—what, in fact, did not need to be said at all—that the congress would be a simply "deliberative" assembly.[3] But the Opposition demonstrated

[1] Deb. of Congress, VIII., pp. 423, 432, 433, 436; IX., p. 168, passim; Niles' Reg., XXX., p. 103.

[2] Salazar, in his letter of Nov. 2, 1825, to Clay, divides the topics of discussion under the heads (I.) and (II.) into the common concerns of the war-making powers and the interests common to them and the neutral powers.

[3] In Clay's instructions of May 8, 1826, to the ambassadors is this passage: "All notion is rejected of an amphyctionic council, invested with power finally to decide upon controversies between the American

to him that the congress would have the right to make binding resolves, and stamped it as ignorance and folly to let the country be bound by Epigoni of unequal birth.

Objections of this sort were brought with especial emphasis, and not without a certain justification, against the suggestion of an universal endorsement of the Monroe doctrine, a doctrine that originated in the same circumstances that gave birth to the Panama congress. In July, 1818, lord Castlereagh told the American ambassador Rush, in a conversation at the house of the French ambassador, that England had been requested by Spain to mediate, with the co-operation of the Holy Alliance, between her and her rebellious colonies. Rush answered this revelation with the declaration that the United States would take part in no intervention for peace, "if its basis were not the independence of the colonies."[1] In August, 1823, Rush learned from Canning that the Holy Alliance was beginning to seriously think of interfering in colonial affairs in favor of Spain.[2] England's position on the question had meanwhile substantially changed. If Castlereagh had been willing in 1818 to make the return of the colonies under Spanish dominion the basis of the attempt at intervention, Wellington had by this time used very different language at the congress of Verona, and now Canning declared himself ready to act in direct opposition to the plans of the Holy Alliance, provided he were assured of the co-operation of the United States. Rush at once forwarded these statements of Canning to his government, which received them

states or to regulate in any respect their conduct." But hence Kapp has not a happily chosen expression when he says (Gesch. der Sklaverei, p. 193) that Clay had in view the creation of "an American amphyctionic court to counteract the European Holy Alliance." See, however, Deb. of Congress, VIII., p. 649.

[1] Rush, Report of July 31, 1818; Elliot, Dip. Code., II., pp. 639, 640.

[2] Compare Rush, A Residence at the Court of London from 1819 to 1825, II., pp. 30–40. See also Rush's letters to Clay of June 23, 1827, and February 15, 1842; Clay, Priv. Corresp., pp. 165, 467.

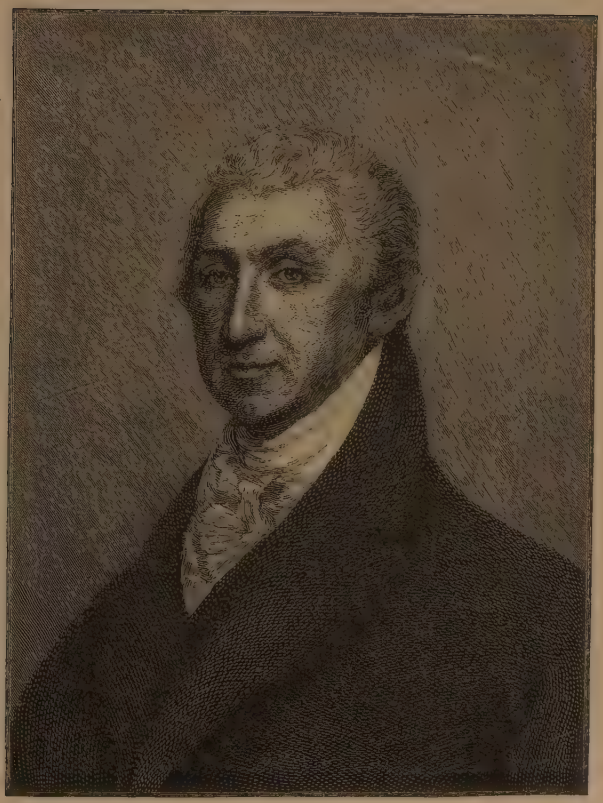
with "great satisfaction," for, as Calhoun, the then secretary of war, afterwards declared, the power of the Alliance was so great that the United States themselves had not felt safe from its intermeddling. Monroe sent the records concerning the matter to all the members of his cabinet, and at the same time asked Jefferson for his opinion. The latter answered that "America, North and South," as a result of its own peculiar interests, should also have a peculiar political system, founded on freedom. It should be a leading principle of the United States "never to suffer Europe to intermeddle with cis-Atlantic affairs." For the attainment of these ends the offered help of England should be accepted, even at the risk of a war.[1] The cabinet, after long and careful consideration, came to the same opinion. Almost at the very moment when Spain formally invited the allied powers to a conference in Paris,[2] the president announced in his annual message of Dec. 1, 1823, the so-called Monroe doctrine.[3] Its essence is contained in the following sentences:

. . "We declare that we should consider any attempt [of

[1] "Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe. Our second, never to suffer Europe to intermeddle with cis-Atlantic affairs. America, North and South, has certain interests distinct from those of Europe, and peculiarly her own. She should therefore have a system of her own, separate and apart from that of Europe. While the last is laboring to become the domicile of despotism, our endeavors should surely be to make our hemisphere that of freedom. One nation, most of all, could disturb us in this pursuit. She now offers to lead, aid, and accompany us in it. By acceding to her proposition, we detach her from the bands, bring her mighty weight into the scales of free government, and emancipate a continent at one stroke, which might otherwise linger along in doubt and difficulty. . . . But the war in which the present proposition might engage us, should that be its consequence, is not her war, but ours. . . . It is to maintain our principle, not to depart from it. . . But I am clearly of Mr. Canning's opinion that it will prevent, instead of provoking, war." Jeff. Works, VII., pp. 315, 316.

[2] Webster, Works, III., p. 202.

[3] Foreign State Papers, V., p. 250.



JAS. MONROE.

the allied powers] to extend their system to any portion of this hemisphere as dangerous to our peace and safety. . . With the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them or controlling, in any other manner, their destiny by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States."

This declaration was received by the people with lively satisfaction. It was largely due to this, that Spain's prayers for intervention received no attention. But now all fears that the Holy Alliance would try to put in a word or two in the affairs of the United States[1] had vanished. And on this account a very different interpretation was given to the Monroe doctrine. In the letters of invitation from Mexico and Colombia, this question occupied a prominent position. Obregon referred to Monroe's message and said that the "only means" of preventing or practically opposing the interference of neutral powers, was "a previous agreement about the method in which each of the congress-powers should give its co-operation." Salazar spoke even of an "eventual alliance," and wished that "the treaty, no use of which is to be made until the appearance of a *casus foederis*, may remain secret." Besides this, both the ambassadors declared that the congress would settle how all possible attempts of European powers to establish colonies on American soil were to be met. These were proposals of a very earnest sort. The Opposition affirmed, unquestionably with justice, that their adoption by the United States would not be a simple re-affirmation of the Monroe doctrine. The Opposition defended itself from the reproach that it had become indifferent to the cause of freedom in

[1] Clay's report of March 9, 1826, to the house of representatives.

the rest of America; it simply wished, it said, to preserve to the United States the freedom of choice and not to bind them to draw the sword under all circumstances in behalf of the other American states, when European powers interfered in their affairs. The weak point in the argument of the Opposition was again the assumption that the fulfillment of the wishes of Colombia and Mexico would result simply from the representation of the United States in the congress, without any further action. Even in this case, there was no lack of apparent justification. Among the documents which the president sent in to congress there was a dispatch of Clay to Poinsett, the ambassador of the United States to Mexico, in which was this passage: "Only about three months ago, when Mexico thought France was meditating an invasion of Cuba, the Mexican government at once demanded through you, from the government of the United States, the fulfillment of the memorable pledge given by the president in his message of December, 1823, to congress." Clay, indeed, explained the opinion here expressed, in his report of March 29, 1826, to the house of representatives, by saying that the United States stood pledged, not to a foreign power, but only to themselves.[1] But the Opposition naturally did not accept this explanation as sufficient. Yet whatever the secretary of state might think, in any event the view of the president must rule and the latter had expressed himself so clearly that the Opposition did not even try to twist his words from their meaning. As secretary of state, he had had a prominent part in the announcement of the Monroe doctrine and had steadily occupied a perfectly consistent position. He would

[1] "If, indeed, an attempt by force had been made by allied Europe to subvert the liberties of the southern nations on this continent and to erect upon the ruins of their free institutions monarchical systems, the people of the United States would have stood pledged, in the opinion of their executive, not to any foreign state, but to themselves and their posterity, by their dearest interests and their highest duties, to resist to the utmost such attempt."

therefore have gladly seen the question brought before the congress and gave it to be understood that he considered a general declaration in its favor as not inadvisable. But he expressly stated that under no circumstances would any pledges be entered into beyond the reciprocal assurance of the powers represented that they would execute the principles laid down in the doctrine, each within its own territory and with its own resources.[1] So, on this point, too, there failed to be any sufficient reason for such a violent opposition.

Yet there was no lack of objections of practical significance. In the house of representatives, these were only lightly touched upon, partly because the northern members of the Opposition party looked with the greatest displeasure upon any vigorous urging of them, and especially because only the question of appropriating money to pay the expenses of the mission, already decided upon in accordance with the provisions of the constitution and without the co-operation of the house, came before the latter body. The Opposition wished to attach conditions to the appropriation which amounted to instructions given to the president as well as to the ambassadors, and consequently the debate went far beyond the proper bounds. But yet it had to be kept within certain limits, so that the real cause of the embittered struggle, outside of opposition for the sake of opposition, can scarcely be discovered in it. But in the senate it appeared so much the more clearly that the slaveholding interest was again the cause of strife. There was no attempt to conceal this. It was proclaimed in a hitherto unheard-of way. The slaveholders simply stated that they saw in the congress peril to their "peculiar institution," and drew from this fact, in the same conclusive way, the inference that this must be recognized *eo ipso*

[1] See the message of Dec. 26, 1825, to the senate and the one of March 15, 1826, to the house of representatives. Compare, also, the instructions to the ambassadors. Niles' Reg., XXXVI., p. 77.

as an absolute veto. The municipal character of slavery was wholly stripped off, form and substance. It appeared as an independent power, which only obtained its rights when it dictated the domestic and foreign policy of the Union. Clay and Adams had pointed out freedom and popular sovereignty, in contradistinction to the absolutistic principles of the Holy Alliance, as the underlying basis of the political and social life "of America." Now the south affirmed that in reference to the rest of America, as well as to Europe, slavery must be and remain the prime motive of the foreign policy of the United States. Whoever cannot yet clearly understand that an "irrepressible conflict" existed between north and south can learn much from the rigorous logic with which the southern senators in this debate put forward slavery as an impassable wall between the United States and the rest of the world.

In the invitations to the congress Hayti was mentioned, a name that had an ominous sound in the southern states for more than thirty years. If they could have blotted one page out of the book of history, it can scarcely be doubted that they would have chosen the one which told the story of the successful negro revolution in Hayti. It was a cry of warning, the whole significance of which was recalled to the conscience of the slaveholder by the slightest cause. The thing which had been done could not be undone; but men did what they could,—the independence of Hayti did not exist for the United States. The commercial spirit of the people would not suffer the permanent prohibition of the lucrative trade with the island;[1] but no international relation existed between the two republics.

[1] At the request of Napoleon, expressed in an imperious tone, a law of Feb. 28, 1806 (Statutes at Large, II., p. 851) had prohibited all commerce with the island for a year. The law referred, indeed, only to places not found in the possession of the French; but the French rule was actually broken everywhere. The French ambassador had expressly based the demand of the emperor on the ground that this matter concerned "African slaves," the dregs of humanity.

Salazar touched lightly upon this in his letter of invitation, and let it clearly appear that it was his wish that Hayti should be recognized as a member, with equal rights, of the American family of nations. He admitted that the question "involved grave difficulties," on account of "the different way in which Africans are looked upon, and the different rights they enjoy in Hayti, the United States, and the other American states;" but expressed the hope that, despite this, an understanding might be arrived at. He imprudently used in this connection the phrase: "This question will be determined by the congress."[1]

Adams did not mention this point at all in his message to the senate, and in the one to the house he explained, in a diplomatically verbose and vague sentence, that the ambassadors had been instructed to give reasons for further delay in the recognition of Hayti and "to refuse consent to any arrangement whatever upon different principles." The silence concerning the reasons which had hitherto hindered the recognition was scarcely less suggestive than the foaming rage which the passage already quoted from Salazar's letter called forth in the senate.

The history of the republics gave an example which was "scarcely less fatal than the independence of Hayti to the repose" of the south. They had not only copied from the Revolutionary records of the United States the words "freedom" and "equality" and "universal emancipation," but had actually broken the chains of all slaves.[2]

[1] The word "determine" had been used in the official newspaper of Colombia. See Debates of Congress, VIII., p. 423.

[2] "With nothing connected with slavery can we consent to treat with other nations, and least of all ought we to touch this question of the independence of Hayti in conjunction with revolutionary governments, whose own history affords an example scarcely less fatal to our repose. Those governments have proclaimed the principles of liberty and equality, and have marched to victory under the banner of 'universal emancipation.' You find men of color at the head of their armies, in their legislative halls, and in their executive departments." Hayne, March 14, 1826, Debates of Congress, VIII., p. 427.

A discussion with them, therefore, over any question whatever in which slavery was in any way whatever involved was less admissable than with any one of the other powers, for this action—and this alone—had made them in the eyes of the south "buccaneers, drunken with their new-born liberty."[1] This, however, was only incidentally touched upon. The main thing was that slavery should no more be made, in any way whatever, a subject of negotiation with other powers than the rights of slaveholders should be subjected to any sort of discussion inside of the Union. It had already been pointed out as a mistake that attempts had been made to conclude treaties with England and Colombia for the suppression of the slave trade.[2] "The peace of eleven states in this Union will not permit . . . the fact to be seen or told that for the murder of their masters and mistresses they [the slaves of Hayti] are to find friends among the white people of these United States." The whole question "is not debatable, neither at home nor abroad, not even in this chamber."[3] Hayne, of South Carolina cried: "To call into question our rights is grossly to violate them; to attempt to instruct us on this subject is to insult us; to dare to assail our institutions is wantonly to invade our peace. Let me solemnly declare, once for all, that the southern states never will permit, and never can permit, any interference whatever in their domestic concerns, and that the very day on which the unhallowed attempt shall be made by the authorities of the federal government we will consider ourselves as driven from the Union."[4] But there was no need even of an unjust interference. "To touch [the question] anywhere is to violate our most sacred rights, to put in jeopardy our dearest interests, the peace of our country, the safety

[1] Deb. of Cong., VIII., p. 456; Niles' Reg., XXX., p. 170.
[2] Ibid, VIII., p. 426.
[3] Ibid, VIII., p. 469.
[4] Ibid, VIII., p. 426.

of our families, our altars, and our firesides." And even this does not fully show the terrible nature of the question. Johnston of Louisiana wished to see the country represented at the congress, but for precisely the same reasons which, according to the views of Benton, Hayne, Berrien and others, forbade any thought of such a thing. He wished the "South American states" to be informed of "the unalterable opinion" of the United States that "the unadvised recognition of that island [Hayti] and the public reception of their ministers will nearly sever our diplomatic intercourse, and bring about a separation and alienation injurious to both." "I deem it," he continued, "of the highest concern to the political connection of these countries to remonstrate against a measure so justly offensive to us, and to make that remonstrance effectual."[1] Hayne, too, had already demanded that "the ambassadors in South America and Mexico should be instructed to protest against the independence of Hayti."[2] These were drastic illustrations of the old assertion that not the blame, but the compassion, of the world was deserved, because a hard fate had let the curse brought upon the land by the avarice of England descend to the innocent children of the third and fourth generation. Could Clay lay his finger on a resolution of the Holy Alliance which smacked more strongly of the mouldy barbarism of by-gone centuries?

If the request for a discussion of the independence of Hayti, which could exert no sort of influence upon the United States, except by its moral force, irritated the slaveholders to such a degree, they were naturally still more

[1] Deb. of Cong., VIII., p. 441.

[2] Hamilton of South Carolina declared in the house of representatives: "I should avow what I believe to be the sentiments of the southern people on this question; and this is, that Haytian independence is not to be tolerated in any form. . . . A people will not stop to discuss the nice metaphysics of a federative system when havoc and destruction menace them in their doors."

moved by the fact that Cuba was threatened, since here material interests of the greatest significance were actually concerned. Clay declared that "even Spain has not such a deep interest in such a multiplicity of forms in the future fate of Cuba, whatever that fate may be, as the United States."[1] The increasing weakness of Spain therefore gave the administration the liveliest anxiety. Many a longing look had already been cast by the United States upon the rich island which commanded the Gulf of Mexico. But men did not conceal from themselves the fact that many weighty reasons spoke against its acquisition and, moreover, did not look upon the legal question as a matter of secondary importance. There was a quite unanimous agreement that, taken all in all, the interests of the United States—both the general interests and the special ones of the slaveholder—demanded the maintenance of the *status quo* in Cuba. But this seemed seriously threatened on different sides. England and France were looked upon with distrust, especially the latter, because she had already sent a strong squadron into the West India seas without giving any special reason for doing so. Colombia and Mexico had been wrapt up for some time in thoughts of invasion. The safest way to avoid these dangers was evidently to bring to an end the war between Spain and her former colonies. In the Spring of 1825 the United States ambassador at St. Petersburg was instructed to urge the emperor to persuade Spain to give up the hopeless struggle.[2] The gist of the instructions may be condensed into the four following sentences: the United States wish no change in the political relations of Cuba; they could not see with equanimity the island pass into the possession of any European power whatever;[3] the independence of

[1] Instructions of the ambassadors to the Panama congress.

[2] Clay's dispatch to Middleton of May 10, 1825.

[3] Compare also Clay's dispatch of October 25, 1825, to Brown, United States ambassador at Paris.

Cuba is not desired by them, because this could be maintained with difficulty, and because the struggle for it would probably assume the same terrible character that the revolution in Hayti did; the last-named reasons, which have an especial weight on account of the existence of slavery in the United States, apply equally to any possible attempts of acquisition made by Colombia and Mexico. These four points, with the strongest emphasis laid upon the last, were urged in all the other official writings of the administration on this affair. The reasoning was only varied to correspond with the change of address, and the tone grew sharper in proportion as circumstances developed.

After Nesselrode had returned an answer in the name of the emperor,[1] which was received at Washington as, upon the whole, favorable, and after "the freeing of the islands of Porto Rico and Cuba from the Spanish yoke" had been openly placed upon the programme of the Panama congress,[2] Clay sent a new dispatch to Middleton,[3] which was intended to urge Russia to immediate action. It had already been declared that the United States could not with equanimity see Cuba pass into the hands of a European power. Now it was directly declared that the United States would not "allow" and "permit" it. Moreover, the position of the country in regard to Colombia's and Mexico's plans of acquisition was more sharply defined. It was stated, first, that "the president could see no just ground for armed intervention" if Spain should obstinately continue the war, for invasion would then be only a "legal warlike operation" of the states named. Yet this declaration was linked with a significant condi-

[1] Nesselrode to Middleton, August 25, 1825.

[2] The words quoted are taken from the programme already mentioned, published in the official newspaper of Colombia. In Salazar's and Obregon's letters of invitation Cuba is not mentioned.

[3] December 26, 1825.

tion. "If these republics, contrary to all expectation, should place arms in the hands of one race in order to destroy another; if . . they should countenance and encourage excesses and actions which, on account of our proximity, could by infection endanger our repose and safety; then the government of the United States might feel obliged to interpose." This same conditional threat, in vaguer form, had already been directly expressed to Spain before the transmission of the first dispatch to Middleton. It had been expressly stated in this that the United States did not insist upon the stoppage of the war "for the sake of the new republics."[1] Colombia and Mexico had also been informed of the wishes of the United States; but the somewhat bitter mouthful was made more pleasant to the taste, inasmuch as a certain friendly tone could be detected in the diplomatic expressions, chosen with the greatest prudence. Dec. 20, Clay sent similar notes to Salazar and Obregon, in which their respective governments were requested to delay the expedition against Cuba, which, it was said, was being fitted out in Carthagena or elsewhere. The main reason for this request was stated to be that the negotiations undertaken with Russia for intervention in the interests of peace had some prospect of success.

But besides this, it was also declared in a very intelligible way that under certain circumstances the United States would intervene if their wish were not respected.[2]

If a reproach could rightly be brought against the administration, it was surely not that the Cuban question had been lightly considered, or even merely that the govern-

[1] Clay's dispatch to Everett, April 27, 1825.

[2] "It would also postpone, if not for ever render unnecessary, all consideration which other powers [i. e. the United States] may, by an irresistible sense of their essential interests, be called upon to entertain of their duties, in the event of the contemplated invasion of those islands, and of other contingencies which may accompany or follow it."

ment had not sought to defend with circumspection and energy the especial interests of the slaveholders, which were involved in this question. Yet the majority of the representatives of the south were not of this opinion, and the small minority which stood by the president affirmed, like the rest, that circumstances now demanded a still more energetic treatment. On the main question, majority and minority were united. They disputed only whether representation in the congress, or absence from it, would be more in accordance with their views. The minority throughout the debate did not fall behind the majority itself in the determination with which it demanded the thwarting of the plans of Colombia and Mexico. If Hayne made the declaration that the United States would not "permit" the South American states "to take or to revolutionize" Cuba,[1] and if Berrien wished "by the blessing of God and the strength of our own arms to enforce the declaration,"[2] Johnston himself considered it as self-evident that "threats" should be tried, if "advice" and "remonstrances" did not avail.[3] All the representatives of the slave states were unanimous in thinking that the want of a sufficient reason for interference in case of an invasion, to which Adams referred, should not control the matter. With equal clearness the reasons for this were summed up in the one phrase: the duty of self-preserva-

[1] Deb. of Cong., VIII., p. 429.

[2] "If our interest and our safety shall require us to say to these new republics: 'Cuba and Porto Rico must remain as they are,' we are free to say it, yes, sir, and by the blessing of God and the strength of our own arms to enforce the declaration, and let me say, too, gentlemen, these high considerations do require it. The vital interests of the south demand it and the United States will be recreant from its duty, faithless to the protection which it owes to the fairest portion of this Union, if it does not make this declaration and enforce it." Ibid, VIII., p. 456.

[3] "Advise with them—remonstrate—menace them if necessary, against a step so dangerous to us, and perhaps fatal to them." Ibid, VIII., p. 440.

tion.[1] Buchanan, always a courtier of the south, translated this phrase, which on account of its cold prose might have produced little effect upon many ears, into a striking picture. Cuba, he maintained, would become a terrible explosive powder-magazine for the south, because Colombia and Mexico "always marched under the standard of universal emancipation" and "always conquered by proclaiming liberty to the slave.'"[2] No representative of the north made any objection to the application of this comparison, and none could be made. The condition of affairs was stated in it with absolute clearness, but still no representative of the north stood up to point out, in just as curt a phrase, how the south had played fast and loose with its arguments. Slavery is a domestic affair of the south; to interfere with it is to dissolve the Union,—this was the first position of the south. Slavery is like a powder-magazine, which can be fired as easily from without as from within; the danger of this occurrence must lead the federal government in the way pointed out to it by the south, which alone understands the question,—this was its second position. The slaveholding interest thus laid claim not only to be recognized as the sovereign power in the state, but it put itself above the state.

As the Virginia and Kentucky resolutions, since they had no immediate practical results, had been passed over in favor of events of the day, so the Panama congress was also forgotten, and still more quickly. The administration gained a formal victory in both houses, but practically the Opposition had reached its end by delaying the decision. When the ambassadors of the United States arrived in Panama, the congress had already adjourned and the

[1] "It is demanded of this government by every consideration of self-preservation—the great law of nature and paramount to all other law—by our interests and by humanity [!] not to suffer the present condition of Cuba to be altered." Powell of Virginia, Deb. of Cong., IX., p. 96.

[2] Ibid, IX., p. 142.

agreed-upon reunion in Tacubaya did not take place. This pitiable end of Clay's illusions makes the long and earnest debates in both houses appear to superficial critics like nonsense. Their bitter earnestness was recognized only after long and harsh experience. The American league of the people which, in opposition to the princes' league of European despots, was to be a refuge of freedom for the whole world, had indeed dissolved into mist. Instead of a formal protest against the machinations of the Holy Alliance and a spirited exhortation to enslaved nations to maintain unbroken courage in the holy struggle for right and freedom, the world was comforted with a sweeping, unreserved confession of faith of the slavocracy, which made the slaveholding interest the starting-point, the means and the goal of the national policy of the only free state, the voice of which was of weight in this matter. This, also, had no immediate practical results. But, as in the case of the state-rights men and the Virginia and Kentucky resolutions, so now the slaveholders had registered their claims. This gave a permanent meaning to the otherwise absolutely fruitless and aimless struggle over the Panama mission.

Another question, which also originated at the beginning of Adams's presidency, soon won a much greater practical significance, although it concerned an affair which at bottom was only formally a national one. When Georgia, on April 24, 1802, ceded to the Union her western lands, she did so on the condition that the United States "as soon as it can be done in a peaceful way and on reasonable conditions" should acquire for the state the territories of the Creeks and Cherokees, which lay within her borders. The federal government had indeed acquired for Georgia, on repeated occasions, certain stretches of lands from both these tribes, but the possibility of persuading them to a voluntary sale of the whole territory constantly became smaller, for they had become settled, and the ties of civilized life bound them every year more firmly to the place.

Georgia therefore became anxious and impatient, for she failed to feel confident that she, like the free states, would be able to compel the Indians, by the pressure of a higher civilization, to break up their settlements and wander farther into the western wilderness. A memorial of the legislature in 1819 urged the president to hasten the fulfillment of the agreement of 1802. It insisted that the state had a "right" to the soil, but yet expressly asserted that this right could be realized only through the federal government.[1] The administration was entirely willing to fulfill its pledges, but the more emphatically Georgia insisted upon this, the more firmly the Indians refused to sell. A counsel of Creek chiefs at Tuckebachee declared, on May 25, 1824, that the lands still in their possession were only sufficient for the support of the tribe, and resolved, appealing to the guaranties given them in all the treaties, "on no account . . (to) sell one foot" of their land. This resolution was to hold good for all time and was recommended to the consideration of the chiefs in a very emphatic way. "We have guns and ropes; and if any of our people should break these laws, those guns and ropes are to be their end." On the 29th of October of the same year, a counsel of chiefs met again at Polecat Spring, passed a resolution of the same tenor, and committed it—"confiding in the magnanimous disposition of the citizens of the United States to render justice" to the Indians—to a newspaper for publication, "so that it may be known to the world."[2]

The negotiations with the commissioners of the United

[1] "The state of Georgia claims a right to the jurisdiction of the territory within her limits. . . . She admits, however, that the right is inchoate, remaining to be perfected by the United States, in the extinction of the Indian title; the United States *pro hac vice* as their agents." Worcester vs. State of Georgia, Peters, Rep., VI., p. 585; Curtis, X., p. 264.

[2] The resolutions are quoted in full in Niles' Reg., XXVII., pp. 222–224.

States, which took place in December at Broken Arrow, were therefore also without result. But Georgia was determined not to allow herself to be kept longer from the rich territories of the Indians. Her avarice recognized no Indian rights which were to be respected, and the commissioners allowed themselves to obtain in a treacherous way what could not be bought by an honorable bargain. A part of the chiefs were persuaded to sign a treaty of sale at Indian Springs, which was approved, despite the remonstrances and protests of the Indian agents,[1] by the senate and the president (Adams).[2] The Creeks declared that the treaty was a shameful betrayal and fulfilled upon the chiefs M'Intosh, Tustunugge and Hawkins the law of Tuckebachee, which imposed the penalty of death upon every seller of the tribal territory. The grand jury of Milledgeville branded the deed as "nefarious murder,"[3] although the Creeks were unquestionably justified in passing and executing such a law, by their own customs as well as by their tribal status as recognized by the treaties. This was also the opinion of the administration, after it had been shown that M'Intosh and his fellow-culprits had fallen victims, not to the revenge of individuals, but to a resolution of the chiefs. Yet the occurrence caused grave anxiety, for it showed what opposition the fulfillment of the treaty would meet. The reckless and arrogant way in which Governor Troup, on his own responsibility, took steps towards the expulsion of the Indians, was not adapted to lessen this anxiety. According to the representations of the Indian agents, the summary execution of the chiefs was due in great part to the land-survey ordered by the governor. This, however, freed the agents from the accusation of having incited the Indians.

[1] Governor Troup to secretary of war Barbour, June 3, 1825. Niles' Reg., XXVIII., p. 317.

[2] Stat. at L., VII., p. 237.

[3] Niles' Reg., XXVIII., p. 196.

Adams viewed the matter very gravely. He commissioned Col. Andrews to investigate the complaints against the Indian agents, and Gen. Gaines received orders to suppress any hostilities on the part of the Indians and to seek some way in which an understanding could be arrived at with them. Both Andrews and Gaines adopted a prudent, conciliatory course of conduct towards the governor, but they were soon completely at odds with him, since he attacked them in a vulgar way in his official papers, because they did not unconditionally accept his views of the state of things, but practically conducted an impartial examination. He not only considered himself authorized to censure them, but he defined in the harshest tone of arrogance the limits of their competence. Every step they took, according to him, was a usurpation. His proof for this was a simple "*dixi!*" which found its justification in the "sovereignty" of the state, the embodiment of which, according to him, was the governor. The federal government was to him a wholly foreign power, with which he maintained "diplomatic intercourse." In his letters to Andrews, Gaines, and even to the secretary of war, he never speaks of the federal government, but always uses the expression "your government." He does not condescend to any discussion of the question of his competence, because he does not even recognize the possibility of any such question. The sovereign state of Georgia passes sovereign resolutions and the governor, responsible to her alone, accomplishes these, despite the protest of all the powers of the world. State sovereignty had never before been pleaded in such an unconditional way and with such insolent boldness. Yet the administration followed Troup's example in this, that it avoided the usual practice of considering the matter from a constitutional standpoint. It went quietly on its way, leaving Troup to show how far he would venture to make good his pompous words by deeds. Secretary of war Barbour informed the governor, May 18,

1825, in the politest way, that the land-survey ordered by him could not be permitted.[1] There is not the slightest doubt that this prohibition was within the power of the federal government. The execution of a treaty depends, self-evidently, only upon the parties to the treaty, unless the contrary is expressly provided in the treaty itself. Georgia was not a party in this case,[2] and therefore had no initiative whatever in regard to the treaty. Moreover, art. 8 of the treaty set forth that the Creeks could delay their departure until Sept. 1, 1826, and bound the United States to give them, until then, the fullest protection of all their rights. Thus even the president had not the right to authorize the survey, without the consent of the Indians. But apart from all this, Georgia undeniably had not this right, for section 5 of the law of March 30, 1802, concerning intercourse with Indians, forbade "any citizen" of the United States and any "other person" "to survey or attempt to survey" the lands belonging and guaranteed to the Indians, under penalty of a fine of not more than $1,000 and imprisonment of not more than twelve months.[3]

Troup reasoned otherwise. On the 3rd of June he replied to the secretary of war, "without troubling him with the argument," but simply "stating the fact" that "on the instant of the ratification the title and jurisdiction became absolute in Georgia."[4] He therefore did not doubt

[1] "I am instructed to say to your excellency that the president expects from what has passed as well as from the now state of feeling among the Indians, that the project of surveying their territory will be abandoned by Georgia, till it can be done consistently with the provisions of the treaty." Niles' Reg., XXVIII., p. 317.

[2] Since the individual states can conclude no treaties, they surely cannot be parties to a treaty. Constitution, Art. I., Sec. 10, § 1.

[3] Stat. at L., II., pp. 141, 142.

[4] "On the instant of the ratification the title and jurisdiction became absolute in Georgia, without any manner of exception or qualification save the single one which, by the eighth article, gives to the United States the power [!] to protect the Indians in their persons and effects against assaults upon either by whites or Indians." Niles' Reg.,

that Barbour himself would "at once" pronounce it "unreasonable" to expect that any attention should be given to the "most extraordinary request [!]" of the president; postponing the surveys was not to be thought of.[1]

The tone of this letter was very far from being "diplomatic." Troup himself confessed that he had used "strong language," but expressed the hope that Adams would not on this account suspect him of attaching no importance to the maintenance of the Union. He recognized this as an undeniable duty, since other "wise men" were "causing the Union to tremble upon a bauble," by "indulging their whims and oddities and phantasies."

The last sentence did not refer to the affair then under discussion, but to the slavery question.[2] Troup dragged this in only because "slavery was a harp with a thousand strings, which every demagogue could play." The opportunity therefor was offered him by a motion of United States senator King of New York, for devoting the revenue from the sale of public lands, after the extinction of the federal debt, to the emancipation of slaves and the colonization of free negroes, and by an opinion of attorney-general Wirt, in which the latter held as unconstitutional a South Carolina law that provided for the imprisonment

XXVIII., p. 318. The passage in Art. 8 reads: "The United States stipulate for their [the Indians'] protection against the encroachments, hostilities and impositions of the whites and of all others."

[1] "If the president believes that we will postpone the survey of the country to gratify the agent and the hostile Indians, he deceives himself."

[2] "Even upon the subject of intensest interest to us, upon which the opinions of the president are known, many allowances are made for the immeasurable distance which separates us. . . . The fearful consequences constantly in sight keep us in a state of agitation and alarm. I strive to stave them off; and it is for this that language is employed sickening to the heart and most offensive to a vast portion of the common family. Who can help it when they see wise men engaged in a playfulness and pastime like this, indulging their whims and oddities and phantasies, and causing this Union to tremble upon a bauble."

of all free colored persons working upon a ship, until the ship left the harbors of that state.[1] Troup had held up both these facts in his message of May 23, 1825, as "officious and impertinent intermeddlings with our domestic concerns," and had then drawn the inference that "very soon, therefore, the United States government, discarding the mask, will openly lend itself to a combination of fanatics for the destruction of everything valuable in the southern country." He therefore entreated the legislature "most earnestly, now that it is not too late, to step forth and, having exhausted the argument, to stand by [its] arms."[2]

The utter lack of reasonable grounds for any excitement whatever makes this language seem expressly designed to introduce into the relations between the general government and the states the rowdy rule which had already begun to creep into other politics. Yet it found an echo in the legislature. The committee to which this part of the message was referred brought in a report to the (Georgia) house of representatives, which blew still more loudly in the trumpet of rebellion. It "proclaimed that the hour is come, or is rapidly approaching, when the states from Virginia to Georgia, from Missouri to Louisiana, must confederate and, as one man, say to the Union: We will no longer submit our retained rights to the snivelling insinuations of bad men on the floor of congress, our constitutional rights to the dark and strained constructions of designed [designing?] men upon judicial benches." The legislature should therefore resolve that it approves, with its whole heart, the exhortation of the governor for the people of Georgia to stand by their arms, and that its members should "for the support of this determination

[1] Opinions of the Attorneys-General, I., p. 659.

[2] Niles' Reg., XXVIII., p. 240. This message contains the phrase so often quoted later: "It [slavery] may be our physical weakness—it is our moral strength."

. . mutually pledge to each other [their] lives, [their] fortunes, and [their] sacred honor."[1] The astonishment and anger excited in the other states by this uncaused outbreak of madness were so great that the legislature considered itself warned to let the responsibility remain wholly on the governor and its own committee. It adjourned without coming to any conclusion on the committee's report. But it did not leave the governor in the lurch in the struggle itself. Troup urged this on with all his energy, although he had to abandon the attempt to foment a causeless quarrel on the slavery question.

He notified Gaines, June 13, that the survey of the lands would be undertaken, "disregarding any obstacles which may be opposed from any quarter." Gaines answered that the Indians had already been informed of the veto laid by the federal government upon this scheme. This letter crossed a new one of Troup, in which he informed Gaines that the laws of Georgia had already been extended over the Creek territory, and that he, "of course," had to fulfill them. On the following day he again sent a prolix note, in which he summed up the legal question in the well-known sentence of the Kentucky resolutions: "As there exist two independent parties to the question, each is permitted to decide for itself." He therefore had "only to repeat that, cost what it will, the line will be run and the survey effected." On the same day a letter left the war department, which notified the governor that the execution of his scheme would be on his own responsibility; the federal government would not answer for the consequences. Troup's answer of June 25 was made up of insults from the first word to the last. He insinuated that the federal government was inciting the Indians to let the tomahawk and the scalping-knife do their bloody work; demanded information of the ultimate designs of the

[1] Niles' Reg., XXVIII., pp. 271, 272.

government, in order that Georgia might "guard and fence herself against the perfidy and treachery of false friends"; and declared that he would remain steadfast in his resolve, "of which Gen. Gaines has already had sufficient notice."[1] Now, at last, the administration thought the time had come to use language that could not be misunderstood. July 21, Troup was informed by the war department of the "decision" of the president that the survey would not be "allowed." At the same time Gaines was instructed to use armed force whenever necessary, and a copy of these instructions was also sent to Troup.[2] The latter, who had previously forbidden both Andrews and Gaines to hold any further intercourse with himself, now seemed to wish to extend the injunction to the war department. August 7, he wrote directly to the president a long letter, full of plaints and complaints, which was a real masterpiece of arrogance and shamelessness.[3] Adams, he said, must admit that he "makes and breaks treaties at pleasure,"[4] and he finally cited him before the solemn judgment seat of the "government of Georgia" to render account for his actions.[5] Troup said nothing in this letter about considering himself bound by the "decision" of the president; but the survey was postponed. Yet he declared in his message of November 8 to the legislature, that he had from the first delayed this under protest only because the

[1] This correspondence is given in full in Niles' Reg., XXVIII., pp. 392–398.

[2] Ibid, XXVIII., p. 412.

[3] Ibid, XXIX., pp. 14–16.

[4] "The general [Gaines] is correct in one of his positions, and being in the right himself he puts you in the wrong, and so conspicuously that you stand on the insulated eminence an almost solitary advocate for making and breaking treaties at pleasure."

[5] "Now, sir, suffer me in conclusion to ask if these things have been done in virtue of your instructions, expressed or implied, or by authority of any warrant from you whatsoever, and if not so done whether you will sanction and adopt them as your own, and thus hold yourself responsible to the government of Georgia."

president had expressed the intention of laying the whole affair before congress. But he remarked, in addition to this, that he was not willing to recognize by this the "legality" of the course of action intended by the president; he only thought that the "decision" of this question belonged less to himself than to the legislature of Georgia; the latter was "yet free to act upon the subject as if no measure had been taken by the executive in relation to that reference."[1]

The matter was thus brought for a time to a stand-still. The press favorable to the administration praised the firmness of the president, and claimed a complete victory for him. The European journals, especially the English ones, which had followed the struggle with lively interest, had to listen to many a sneering remark about the shortsightedness which, springing from their hostility to everything republican, had already led them to think they saw the United States bathed in the blood of citizens and the Union shattered forever.[2] The scorn was not undeserved, for if indeed Virginia and the Carolinas sympathized with Georgia, yet they had no idea of following her angry gov-

[1] Niles' Reg., XXIX., p. 203.

[2] The following noteworthy passage is taken from an article in Bell's *Weekly Messenger*, on the quarrel between Georgia and the administration: "Suppose, therefore, that an American civil war should break out, what will be its probable issue? The suitable answer to this question is to be sought in a comparative estimate of the strength of the northern and southern states, and, very fortunately, the power of the northern provinces so far exceeds that of their southern neighbors as not to leave the latter any hope of a long contest. Add to this an immense advantage in favor of the Union. If the federal government finds itself pressed, it will only have to pass a law declaring the southern slaves all free, and they will all rise and join them to a man. The southern states will then have enough to do at home, and will be compelled to resort to the protection of the united government. We know not, indeed, but that this may be the secondary instrument by which providence is about to put an end to the system of slavery in the new continent, and in this point of view it may eventually lead to the greatest good."

ernor as far as it pleased him to go. But, on the other hand, the pæans of victory of the administration party were by no means justified. The struggle was unquestionably an illustration, not of the strength, but of the weakness, of the Union. Without expressing an opinion on the question whether the treaty of Indian Springs had been obtained by trickery, the senate agreed upon a new treaty, which was much more favorable to the Creeks.[1] But Troup was in no way molested by congress. The moral impression made upon the people was therefore by no means that of a powerful maintenance of the federal authority in opposition to the state-rights pretensions of Georgia. It was said, indeed, that no cause had been given for any action whatever, because hitherto only empty threats, without any corresponding deeds, had been indulged in, and because the threats had been uttered, not by the state, but by a number of "individuals." To regard the official acts of a governor simply as those of an individual, has at least the merit of novelty. Moreover, it was not true that Troup had begun and carried on the contest with the administration wholly on his own authority; he could say that he only wished to "execute the laws of the state of Georgia." The majority of the legislature might not go quite as far as he did, but it followed so close upon his heels that it made not the slightest effort to hold him back. And the legislature was the exact expression of the popular feeling. The gubernatorial election took place in the autumn. The campaign was an unusually violent one, and the election was decided by only a few votes, but these were in favor of Troup.[2] The majority of the people thus stood behind him, and his message of November 8 therefore maintained all the claims already made.[3]

[1] Jan. 24, 1826. Statutes at Large, VII., p. 268.

[2] He received 20,545 to 19,857 votes. Niles' Reg., XXIX., p. 216.

[3] Ibid, XXIX., p. 200, seq.

The new treaty with the Creeks was not in the least satisfactory to Georgia. The chiefs who negotiated it at Washington had at first declared that their powers did not permit them to extend the treaty to any territory beyond the Chattahoochee.[1] Yet they finally allowed themselves to be persuaded to agree to a further cession.[2] It was afterwards affirmed in the senate that they had been authorized to do this from the start, and had only thrown difficulties in the way for the sake of treacherously assuring to themselves and their accomplices an undue part of the purchase money.[3] This circumstance gave rise to violent attacks upon the treaty and the administration. Still greater discontent was excited because the treaty, unlike the one of Indian Springs, did not stipulate simply for the cession of the "whole territory lying within the state of Georgia." The administration had tried to transfer this article, unchanged, into the new treaty; but the Creeks had obstinately refused, because the boundary line between Georgia and Alabama had not yet been drawn, and they therefore would not have known at all what they had really ceded.[4] Senator Berrien of Georgia complained that the state lost a million acres by the change in the wording of the treaty, and accused the administration of having made itself the "conscious instrument of the fraud" which the chiefs planned against their own tribesmen.[5] Troup declared, curtly and arrogantly, that he held only to the treaty of Indian Springs, inasmuch as the rights gained by Georgia through that could not be taken away again.[6] The surveyors therefore received orders to begin work on the territory lying west of the boundary-lines stipulated for in the treaty at

[1] Debates of Congress, VIII., pp. 583, 587.
[2] See the exact description of this territory in Art. 2 of the treaty.
[3] Debates of Congress, VIII., p. 591, passim.
[4] Barbour to Troup, Nov. 27, 1826. Niles' Reg., XXXI., p. 282.
[5] Deb. of Cong., VIII., pp. 583, 588.
[6] Troup to Barbour, Feb. 17, 1827. Niles' Reg., XXXII., p. 16.

Washington. But the Indians, without inflicting any personal injury upon them, compelled them to abandon the work and appealed to the president to protect the rights guaranteed them by treaty. Adams, relying upon the law of 1802 already mentioned, had instructions issued at once to the United States attorney and marshal of Georgia to imprison the persons engaged in land-surveys on the other side of the boundary last agreed upon and to bring them before the proper courts. Troup was informed of these instructions and was also told that federal soldiers would be sent to the spot, if further interferences with the treaty made this seem necessary.[1] At the same time Adams by a special message brought the whole matter formally before congress.[2] He expressed therein his conviction that an "obligation even higher than that of human authority" would compel him to forcibly interfere, if matters were pushed to an extreme, but declared that he would first exhaust all other means. The main reason that he had not hitherto used the army was, he said, that this would have apparently led to an armed collision with Georgia, "which would in itself have inflicted a wound upon the Union and have presented the aspect of one of these confederate states at war with the rest." Adams was too skillful a statesman and too well informed in constitutional law to lightly use any such expression in an official paper on an affair of such importance. His whole conduct leaves no manner of doubt that he would have considered it as rebellion, if the federal troops had been forcibly opposed. If he said that Georgia would find herself in such a case engaged in a "war" with the other states, this can be explained only on the supposition that he shunned using the language of authority. It would be doing him injustice to suppose that he paid this reverence to state sovereignty only out of regard to Georgia. But on this very account it can be so much the better in-

[1] See the documents concerning this. Niles' Reg., XXXI., p. 372

[2] Feb. 5, 1827. Statesman's Man., II, p. 642.

ferred what the relative strength of the national idea and of the particularistic tendencies was at that time, or at least how their relative strength was estimated by leading statesmen.

Some weeks after Adams had brought the matter before congress, Troup's answer to the information that the maintenance of the treaty-stipulations would be, if necessary, enforced, was received. He notified the secretary of war, with the "defiance which it [the secretary's letter] merits," that such an attempt would be resisted to the uttermost. On the same day, he had the attorney-general and the solicitors-general of Georgia instructed to use all "necessary and legal [?] measures" to free the surveyors who had been imprisoned "under the authority of the government of the United States" and to bring the persons concerned in their imprisonment to trial. Furthermore, the "major-generals commanding the sixth and seventh divisions" received orders to hold their troops in readiness "to repel any hostile invasion of the territory of this state."[1] In a circular dated Feb. 27, he informed the senators and representatives of Georgia of all these steps, and at the same time sharply defined his position on the constitutional question in a few sentences, saying that "rights of sovereignty" between the states and the United States could not be decided by the United States supreme court, but must be solved by negotiation until another way of settlement was provided in the constitution.[2]

[1] See the documents, Niles' Reg., XXXII., p. 16.

[2] "I consider all questions of mere sovereignty as matters for negotiation between the states and the United States, until the competent tribunal shall be assigned by the constitution itself for the adjustment of them. . . On an amicable issue made up between the United States and ourselves, we might have had no difficulty in referring it to them as judges, protesting at the same time against the jurisdiction, and saving our rights of sovereignty. . . But according to our limited conception, the supreme court is not made by the constitution of the United States the arbiter in controversies involving rights of sovereignty between the states and the United States." Niles' Reg., XXXII., p. 20.

Adams, in his message, had "submitted it to the wisdom of congress to determine whether any further act of legislation may be necessary or expedient." Whatever happened thereafter, the president was no longer alone responsible for it. If congress did nothing, if it did not once express in plain language its opinion on the whole matter, this lack of action was of course an answer to the request of the president and a child could understand it. This was what congress did.[1] The country received this decision with apparent indifference. It had scarcely expected any other, and it brought to pass what was generally desired. A great majority decidedly disliked the conduct of Georgia and especially of Troup. But people were heartily tired of the affair and rejoiced over the prospect that the painful strife would finally be brought to an end. The majority of the states considered it wholly just and proper for the president to try to protect the rights guaranteed to the Indians by treaty. But to let an armed collision occur between a "sovereign" state and the federal government for the sake of these rights, seemed—on whatever side the guilt lay—as the climax of foolishness and criminality. The political morals of the United States were far removed from the point at which legal pledges to Indians were looked upon in the same light as other legal pledges. Whether or not this could be excused, in any event the question, from the standpoint of practical politics, was in this case only one of secondary importance. The main point involved was not the rights of the Creeks, but the corner-stone of the legal foundation of the whole Union. It is true that there was no danger that this corner-stone

[1] The senate passed a resolution which requested the president to exert himself in order to extinguish the Indian title. As far as the house is concerned, I find in the sources of information open to me mention only of the reference of the matter to a committee. I can not assert with certainty that a resolution was never passed, but if so, it certainly had no significance.

would be broken and shattered on the instant. But the demand of *principiis obsta!* was again urged upon the federal government and in a more pressing way than ever before. The demand was not fully met and the children and grandchildren of that generation had to learn by experience that in politics sins of omission revenge themselves as severely as sins of commission. Georgia had still another thorn in her flesh, which was harder to withdraw. Since she had now proved how far she could go unpunished, she went on in the work without delay and with redoubled boldness.

Besides the Creeks, about ten thousand Cherokees still lived within the boundaries of Georgia.[1] Their territory was in every respect richly blessed by nature,[2] and Georgia therefore had an especial longing for it. But, although they fell far behind the Creeks in numbers, it was much more difficult to deprive them of their land, because they had attained a much higher degree of civilization. They led a thoroughly orderly life, successfully pursued not only agriculture but also trade, applied themselves with fortunate results to manufacturing on a small scale, and zealously devoted themselves to the civilization of their race.[3] Of course their civilization was not due to their independent efforts, but with the aid of the federal government and of religious associations they were attaining by degrees the acquirements of their white neighbors, without merging their independent tribal existence. The surrender of their own political and social organization was as unendurable a

[1] Clay's speech on "Our treatment of the Cherokees." Speeches, II., p. 249.

[2] See the details in the report of the secretary of war. Exec. Doc. of 1825-26, Doc. 102.

[3] Compare with the report of the secretary of war, the remarks of judge Johnson in the case of Cherokee Nation vs. State of Georgia, (Peters, Rep., V., p. 21; Curtis, IX., p. 184); Wirt's letter to gov. Gilmer, June 4, 1830 (Niles' Reg., XXXIX., pp. 69, 70) and Deb. of Cong., X. and XI., passim.

thought to them as the exchange of their flourishing settlements for the wilderness west of the Mississippi. They therefore tried by all the means within their power to keep the Creeks from ceding their lands, for they well knew that Georgia could far more easily present the same alternative to them, if she first got rid of the more powerful brother-tribe. That this was her intention, was openly declared in the messages of her governors as well as in her legislature, long before the successful negotiations with the Creeks. As early as the latter part of 1826, the legislature began to pass laws intended to pave the way for the accomplishment of this design. Thus, for instance, a law of Dec. 26 deprived all Indians not acquainted with the English language of the right to testify before any state court.[1] As soon as Adams's request to congress to take steps against the illegal assumptions of Georgia had miscarried so pitiably, the policy marked out by this law was systematically followed up. A law of Dec. 26, 1827, added a part of the Cherokee territory to the counties of Carroll and Dekalb, in order to extend the criminal jurisdiction of the state over it.[2] The Cherokees sent a delegation to Washington which presented to the president, through the secretary of war, Feb. 11, 1829, a written protest against these encroachments upon the rights immemorially enjoyed by them and solemnly guaranteed to them. Adams, however, took no steps in the matter, because his term of office was to expire in a few weeks.

With Adams, the unfortunate Indians lost their last stand-by. He had not only met the assumptions of Georgia with promptness and with his whole energy, and had thereby earned the gratitude of the Indians and the whole Union, but he had also shown an upright zeal in preventing the infringement of their guaranteed rights. Jackson can-

[1] Niles' Reg., XXXV., p. 42.
[2] Loco citato.

not, indeed, be accused of having consciously wronged them, but in all questions he considered the right to be what seemed right to him.

April 18, 1829, the decision of the president was announced to the Cherokees by Eaton, the secretary of war.[1] This began by saying that "there is but a single alternative, to yield to the operation of those laws which Georgia claims, and has a right, to extend throughout her own limits, or to remove and by associating with your brothers beyond the Mississippi to become again united as one nation." He saw no other way, because the right of the federal government to "permit to you [the Indians] the enjoyment of a separate government within the limits of a state and of denying the exercise of sovereignty to that state, within her own limits, cannot be admitted."[2] Thus Georgia had nothing more to fear from the federal executive, as long as she did not forcibly expel the Cherokees from their territory, but contented herself with passing laws which made the condition of the Indians, in the strict sense of the word, unendurable.

Jackson's decision caused the council of chiefs to threaten to punish every land-sale consummated without the previous consent of the tribe with death.[3] Governor Carroll of Tennessee, who had been entrusted by the president with the negotiations for the acquisition of the territory, was roundly refused any opportunity for discussing the question.[4] This decisive stand impelled the legislature of Georgia to make so much the more quickly the greatest use of the "sovereign rights" of the state. Gov. Forsyth had already recommended to the legislature, in his message

[1] Niles' Reg., XXXVI., pp. 258, 259. Compare also the report by Wiley Thompson of his conversation with Jackson. Ibid, XXXVI., p. 231.

[2] Compare with this the view expressed by Jefferson, as secretary of state, Aug. 10, 1791. Jeff., Works, III., pp. 280–281.

[3] Niles' Reg., XXXVII., p. 235.

[4] Ibid, XXXVII., p. 94.

of Nov. 4, 1828, not to longer delay "the extension of all state laws" over the territory of the Cherokees especially, because the whole tribe, part of which was settled in the neighboring states, had adopted a constitutional form of government.[1] The law of Dec. 19, 1829, carried this out, for it "annulled all laws and ordinances of the Cherokees" and cut up their territory and attached it to five counties of the state. Moreover, the law forbade the emigration of the Indians and the sale of their lands and provided for these offenses a penalty of from four to six years' imprisonment at hard labor.[2] Eleven days before, Jackson had given the whole country to understand, by his annual message, that in his opinion Georgia was justified in taking such measures from every point of view.[3] Some months afterwards, congress gave an indirect approval of this position by voting a large sum of money, which the president was to use for the "removal" of the Indians.[4]

[1] Niles' Reg., XXXV., p. 222.

[2] The whole law, which was one of the most shameful pieces of oppression in this long dark chapter of American history, is quoted in Worcester vs. State of Georgia, (Peters VI., pp. 525–528; Curtis, X., pp. 218–221) and also in Niles' Reg., XXXVIII, p. 54.

[3] Statesman's Man., I., pp. 709, 710.

[4] The debates over this bill (Deb. of Congress, X. and XI., passim) are extremely interesting on account of the preposterously stupid sophistry with which the most reckless justification of the right of the strongest is clothed in the garb of justice and even of humanity. Among the northern representatives who spoke with the greatest emphasis in behalf of the rights of the Indians, Frelinghuysen deserves especial mention. Justice, however, demands the statement that the condition of things which the Cherokees wished for could not be maintained in the long run. It seems to me unquestionable that they had the right on their side when they demanded that they should be permitted to continue in their independent political existence under the protection and the sovereignty of the United States. The obligation which the latter had undertaken, in 1802, in regard to Georgia, could not change this fact, for the right of the Cherokees was much older. But a political community in the territory of one or more states of the Union, under the sovereignty of the Union and yet not constitutionally in the Union, —this was an anomaly which could not last. The real circumstances

Under these circumstances the only thing left for the Cherokees to do was to ask the aid of the United States supreme court. The ex-attorney-general, Wirt, was willing to plead their cause. His argument against Georgia's claim to the power of extending her jurisdiction over the Cherokee territory was unanswerable.[1] It was to be assumed as certain that this would also be the view of the supreme court, since the latter had given a decision some years before, from which the unconstitutionality of the law of Dec. 19, 1829, was an inevitable inference.[2] In consequence, however, of a technical mistake, the real

of the case were stronger than the stipulated right. But a juster and more humane compromise between the stipulated right and the demands of the facts in the case should have been found, and would have been, if men had wished to find it.

[1] Niles' Reg., XXXIX., pp. 81–88. It is superfluous to enter more into detail concerning the proof of this, for one sentence suffices as a justification of the opinion expressed in the text: "The 11th Article of the treaty of Holston (compare Statutes at Large, VII., p. 41) contains an express and decisive admission of the principle implied in all the treaties [between the United States and the Cherokees] throughout all their provisions, to wit.: that the territory of the Cherokees is not within the jurisdiction of the states, nor subject to their laws. This treaty is recognized as in full force by all the subsequent treaties. Georgia, as one of the United States, is a party to it, and is estopped to deny what she has thus solemnly admitted."

[2] In Johnson and Graham's Lessee vs. M'Intosh we read: "If an individual might extinguish the Indian title for his own benefit, or, in other words, might purchase it, still he could only acquire that title. Admitting their power to change their laws or usages so far as to allow an individual to separate a portion of their lands from the common stock, and hold it in severalty, still it is a part of their territory, and is held under them by a title dependent on their laws. The grant derives its efficacy from their will, and if they choose to resume it and make a different disposition of the land, the courts of the United States can not interpose for the protection of the title. The person who purchases lands from the Indians within their territory incorporates himself with them so far as respects the property purchased; holds their title under their protection and subject to their laws. If they annul the grant we know of no tribunal which can revise and set aside the proceeding." Wheaton, VIII., p. 593; Curtis, V., p. 516.

question was not decided. In the complaint the Cherokees were described as "a foreign state." The court decided that this description did not apply to them "in the sense of the constitution" and that they therefore could not, as a foreign state, bring a case before the federal courts.[1] But although their complaint was rejected for want of jurisdiction, chief-justice Marshall, who delivered the decision of the court, took occasion to say that in the opinion of the majority of the judges the Cherokees had formed an independent political community, with the expressly recognized right of self-government.[2] That the bare dictum of the judges would have no sort of influence upon Georgia was plain to see from what had gone before. Wirt had asked Governor Gilmer whether the state would not agree, as Virginia and Maryland had done under similar circumstances, to submit the question, by the free consent of the parties, to the supreme court of the United States for decision. In response to his letter, composed with studied courtesy, he received an answer in which Gilmer proved that Troup himself could find his master in causeless insolence and low insults.[3] It seemed as if something worse yet might be expected from the state judiciary. Judge Clayton had already declared to a grand jury, in a violent political harangue, that he should pay no attention whatever

[1] Cherokee Nation vs. State of Georgia, Peters, V., p. 20; Curtis, IX., p. 183.

[2] "So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of the majority of the judges, been completely successful. They have been uniformly treated as a state, from the settlement of our country. . . The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts." Peters, V., p. 16; Curtis, IX., p. 180.

[3] See the correspondence in Niles' Reg., XXXIX., pp. 69–71. Gilmer even gave it to be understood that Wirt, if he entered Georgia, would be brought to a reckoning for having served as the attorney of the Cherokees.

to any command or judgment of the United States supreme court in reference to the Cherokee matter. Facts soon showed that Clayton had only expressed what had long since been resolved upon by the governor and the legislature. A certain George Tassells had committed a murder within the territory of the Cherokees. He was brought before the superior court of the state on this charge, was found guilty, and was condemned to death. Before the execution of the sentence Chief-justice Marshall cited the state by a writ of error, issued in the customary way, "to show cause, if any there be, why the judgment should not be corrected."[1] The governor sent the writ of the chief-justice to the legislature, with an accompanying letter, in which he declared that he would not regard commands of the supreme court which interfered with the constitutional jurisdiction of the state, and would oppose any attempt to execute them with all the means entrusted to him by the laws of the state. The legislature did not lag behind the governor. Both houses passed a series of resolutions to the effect that the action of the chief-justice of the United States was "a flagrant violation of the rights" of the state; that the governor and the whole body of state officials were bound to pay no attention to commands emanating from the United States supreme court, which were intended to interfere with the execution of the criminal law of the state; that the governor was bound to

[1] The eleventh amendment to the constitution provides that "any suit in law or equity" brought by an individual against a state cannot be heard in the federal courts. But the United States supreme court had decided, in 1821, in Cohens vs. Virginia, that "the defendant who removes [through a writ of error] a judgment rendered against him by a state court into this court, for the purpose of re-examining the question whether that judgment be in violation of the constitution or laws of the United States, does not commence or prosecute a suit against the state, whatever may be its opinion where the effect of the writ may be to restore the party to the possession of a thing which he demands." Wheaton, VI., p. 412; Curtis, V., p. 105.

"resist and repel any and every invasion, from whatever quarter, upon the administration of the criminal laws" of the state, with all the "force and means" entrusted to him by the constitution and laws of the state; that "the state of Georgia will never so far compromise her sovereignty as an independent state, as to become a party to the case sought to be made before the supreme court of the United States by the writ in question"; and that the governor should acquaint the sheriff of Hall county with these resolutions as far as was "necessary to ensure the full execution of the laws in the case of George Tassels."[1] In accordance with this notification Tassels was executed December 28, 1830. This was the end of the matter. It might then well be asked what the "victory" that Adams had won over Troup was worth. If the structure of the Union had a keystone, it was unquestionably the supreme court of the United States. This had become a stumbling-stone to the "sovereign" state of Georgia, and she thrust it aside contemptuously. And there was not the slightest attempt made to bring her to a reckoning for this.

The further course of the unequal strife between Georgia and the Cherokees needs not to be followed out in detail here. The Indians made a passive resistance for several years with unbroken courage, protesting against every new exercise of oppressive power, and appealing to their undeniable rights in the matter. Georgia took the less notice of this inasmuch as Jackson allowed even the federal soldiery to be used in carrying out the robber-policy.[2]

[1] Niles' Reg., XXXIX., p. 358. Compare the report of a committee of the Pennsylvania house of March 1, 1809 (Niles' Reg., XLIII., Suppl., p. 24), and the answer of the legislatures of Georgia and Virginia to the amendment proposed by Pennsylvania to the constitution. (Ibid, pp. 83, 84, and XLII., p. 93).

[2] The raffle of the Cherokee lands and the prohibition of working the gold mines contained in them can be described by no other name. Compare Niles' Reg., XXXVIII., pp. 328, 404, 405; XXXIX., pp. 106, 154, 181, 182, 263, 453; XL., pp. 62, 296, 297.

"Magnanimity, long-suffering, and humanity" did not hinder Georgia from simply driving the poor Indians from house and home with the sabre. She left the Indian only so much of his possessions as sufficed to keep him from dying of hunger. She thrust his own laws aside. She placed him under her laws, without granting him a single right. And she harassed him and trampled upon him whenever and however she could.[1] The legal representatives of the "sovereignty" of the state developed a shocking brutality in this course. Patrols marched through the whole territory, arrested every suspected person, and sent him in chains fifty or a hundred miles away to "headquarters" to often set him free at once with curses and threats because the "law" did not authorize his imprisonment. Especial sufferings were heaped upon the missionaries who went in the fulfillment of their duties from one mission station to another, without having obtained the permission required by the state law and taken the prescribed oath to support the constitution and laws of Georgia. It was not enough to fetter their limbs; they were chained by the neck to the pack wagons of the hunters, whose barbarity almost surpassed that of the professional slave-drivers.[2] A Presbyterian missionary named Worcester was made to feel the whole rigor of the law, although he had the severe sickness of his wife to plead as an excuse for not having left the territory within the ten days during which he had been ordered to do so. In accordance

[1] "But even to this limited possession [160 acres] the poor Indian was to have no fee-simple title; he was to hold as a mere occupant at the will of the state of Georgia for just as long or as short a time as she might think proper. The laws at the same time gave him no particular right whatever. He could not become a member of the state legislature, nor could he hold any office under state authority, nor could he vote as an elector. He possessed not one single right of a freeman." Clay, Speeches, II., p. 257.

[2] Niles' Reg., XL., pp. 297, 298, 460–462.

with the provisions of the law of Dec. 22, 1830,[1] he was condemned to four years imprisonment at hard labor for this crime.[2] This sentence brought the whole matter again before the United States supreme court, which now in a formal decision declared all the claims made by Georgia on the ground of her "sovereignty" to be unjustified; the law of Dec. 22, 1830, to be unconstitutional; and the sentence of Worcester to be null and void.[3] Governor Lumpkin had already acquainted the legislature, before the citation of the state to appear before the United States supreme court, with his resolve to present a "determined resistance" to such a "usurpation."[4] The decision of the court did not incline him to change his resolve. He continued to exhort the legislature and the people to stand firm for the sovereign rights of the state. The state court that gave the annulled judgment acted in accordance with this position. It refused to grant a writ of habeas corpus and took

[1] The law is given in full in Worcester vs. State of Georgia. Peters, VI., p. 521, seq.; Curtis, X., p. 215, seq.

[2] See the complete details of the sentence in Niles' Reg., XLI., pp. 174–176. It has a quite peculiar flavor on account of the multitude of Bible texts to which judge Clayton appeals.

[3] "From the commencement of our government, congress has passed acts to regulate trade and intercourse with the Indians. . . All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries which is not only acknowledged, but guaranteed, by the United States. . . The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of congress. The whole intercourse between the United States and this nation is, by our constitution and laws, vested in the government of the United States. The act of the state of Georgia, under which the plaintiff in law was prosecuted, is consequently void and the judgment a nullity." Peters, VI., pp. 556, 557, 561; Curtis, X., pp. 240, 243, 244.

[4] Niles' Reg., XLI., p. 313.

not the slightest notice of the decision of the supreme court.[1] Worcester and his companion Butler had still to spend a year of imprisonment at hard labor, in company with common criminals. They were finally "pardoned" by Gov. Lumpkin, partly because the outlook for a solution of the Cherokee question, in a way satisfactory to Georgia, seemed to render their further imprisonment unnecessary, and partly because their liberation seemed desirable for partisan reasons.[2] For the insolent contempt of the authority of the supreme court, no sort of satisfaction was given, and indeed no sort of satisfaction was demanded. Jackson regarded this issue of the struggle with indifference. Perhaps he even took a quiet, mean joy in it, because Marshall, as he very well knew, was a determined opponent of his re-election.[3]

Thus for the first time the doctrines of state rights laid down in the Kentucky resolutions had been fully carried out. From the beginning Georgia had chosen as her standpoint the fundamental principles that the federal authorities and the states, that is, the state governments, were "parties" who had no common judge and that therefore each party must "decide for itself." And she—at last indirectly supported by the federal executive—had remained a complete victor.

[1] Niles' Reg., XLII., p. 78.

[2] Ibid, XLIV., pp. 359, 360.

[3] Depending upon a statement of G. N. Briggs of Massachusetts, who was at the time a member of congress, Greeley (The American Conflict, I., p. 106) relates that Jackson said: "John Marshall has made his decision; now let him enforce it!" Senator Miller of South Carolina said, in 1833, in the debate over the so-called force bill: "No reproof for her [Georgia's] refractory spirit was heard; on the contrary, a learned review of the decision came out, attributed to executive countenance and favor." Niles' Reg., XLIII., Suppl., p. 141.

CHAPTER XII.

THE DOCTRINE OF NULLIFICATION. THE COMPROMISE BETWEEN SOUTH CAROLINA AND THE FEDERAL GOVERNMENT.

The pending presidential election had not been without influence upon the issue of the tariff struggle of 1828, and the reception of the latter at the south. The majority of the protectionists was so small that the days of their power were probably numbered, provided the incoming administration should support the opposite party with energy. And the prospects of Jackson, upon whom the anti-protectionists thought they could safely count, grew better every day. Moreover, the extinction of the national debt was close at hand, and the reasonable arguments, as well as the declamations, of the south could reckon on much more willing hearers as soon as the annual financial report showed a regular surplus. The protective system was thus deprived of all the props which had hitherto done it thankworthy service.

The Democrats won a more brilliant victory than they themselves had expected. Jackson received one hundred and eighty-three electoral votes against only eighty-three for Adams, and Calhoun, the irreconcilable enemy of the protectionists, was chosen vice-president by one hundred and seventy-one electoral votes.[1] It was next to be discovered how far men were justified in seeing in this a triumph of free trade principles.[2] The inaugural address

[1] Debates of Congress, X., p. 394.

[2] "In New York, Pennsylvania, and the west General Jackson has been supported as the firm friend of the tariff and of internal improve-

of the new president touched upon this point in a vague and extremely cautious way. It spoke, of course, of "revenue duties," but affirmed that "agriculture, commerce, and manufactures should be equally favored," and added the notable observation that "perhaps the only exception to this rule should consist in the peculiar encouragement of any products of either of them that may be found essential to our national independence."[1] This declaration left both parties unsatisfied. The annual message was awaited with keen expectation. It undeceived the free traders still more completely, without giving the protectionists cause for rejoicing. It expressed an opinion in favor of a "modification" of the tariff, but wished to see the principle that American products must be enabled to compete with foreign adopted as "the general rule to be applied in graduating the duties." In regard to wares which were of especial importance in time of war, "even a step beyond this point" ought to be taken.[2] It was only safe to infer from these sayings that Jackson would gladly see a reduction of some duties; the decided rejection, on principle, of the whole protective system, which the south had wished and expected, could in no way be inferred from the general sentences which inclined to every side and said nothing at all decisive. These passages left it uncertain whether he had it in view to exercise even a moderate pressure upon the protectionists. The recommendation for the division of the expected yearly surplus among the states, in proportion to the ratio of representation, for the execution of internal improvements, until a comprehensive change of the tariff brought about again an equality be-

ments; but in the south he has been as zealously sustained, by those who deny the right and constitutionality of these things, as being the friend of 'southern interests,' believed by them to be seriously injured by the tariff and internal improvement laws." Niles' Reg., XXXV., p. 194.

[1] Statesman's Manual, I., p. 696.

[2] Ibid, II., p. 703.

tween the income and outgo, scarcely pointed to this, especially since he proposed that the federal government should be given the necessary power, if it did not already possess it, by an amendment to the constitution.

Calhoun considered this proposal as a direct bid for the favor of the protectionists, He had not approved of the extreme language used by the meetings at Colleton, Abbeville and other places after the passage of the tariff of 1828, for he had no hope that this wonld exert a favorable influence upon the election, on the issue of which he meant to make his next plan of action depend. Without seeing in Jackson's election a guaranty for a change of principle in the politico-industrial policy of the country, he yet hoped for so much from it that he favored delay.[1] A memorial, which thoroughly discussed, in a quiet and firm way, the economic as well as the constitutional side of the question, seemed to him to best correspond with the demands of the moment.[2]

Calhoun was a true son of the soil from which he sprang, and he therefore possessed in a high degree the characteristic traits of the Protestant population of the north of Ireland, to which he belonged by descent,—that peculiar primitive energy, in which an enthusiasm more idealistic than ideal is strangely linked with stubborn consistency. The blood flowed in his veins not less hotly than in those of any other Carolinian, but a piercing intelligence and a soaring ambition held it sharply in check when great questions were to be weighed and decided. He had not the breadth of view that characterizes the statesman, but he had extraordinarily keen vision. From the sole of his foot to the crown of his head a speculative politician, he was wholly unaware of the results to which his policy

[1] Calhoun, Works, II., p. 215; VI., p. 56.

[2] The draft was adopted, with some alterations, by the legislature and published. It is known as the "South Carolina Exposition." Calhoun, Works, VI., p. 1, seq.

would inevitably lead; but the practical instinct of the American race, and a political activity extending over many years, enabled him to find ways and means for bringing the burning questions of the day to such a solution that he constantly brought his doctrines nearer and nearer to a practical realization. He was not idealist enough to delude himself with the hope of an immediate accomplishment of his whole programme, and not to reconcile himself to the withdrawal of half his stake if it appeared that he could then win the game, and must otherwise lose it entirely. But he was enough of a fanatic to allow nothing to interfere with his will, if the choice between going forward and a partial sacrifice of the *principles* of his doctrines was once set before him. In such cases, he was capable of making "bend or break" his motto, and this not merely in moments of the highest excitement. His attitude remained the same, even when the struggle continued for years. If he had been a visionary, whose system was built up in the air, he could scarcely have done this; the material interests which formed the broad basis of his doctrines gave him the needed strength, yes, made this course a necessity. The constitution and the history of its origin gave him only the formal foundation for the development of the doctrine of state-rights, and its development, with him and with the whole people, did not rest upon *a priori* reasoning. He was originally by no means inclined to this opinion. The slavery question drove him into the path, and with the increasing development of the slaveholding interest he followed it on to the farthest consequences. By the light of slavery, and in accordance with the laws of logic, he worked out the constitutional law of a democratic federative republic, and the logically correct result was a systematization of anarchy. He failed to recognize this fact, because the doctrine was to him a means to an end, and his whole political reasoning became in course of time so completely identified with the prosecution of

the one aim that the means became to his mind its own end. His inborn firmness and the self-reliance that had been distorted into haughtiness under the influence of slavery thus became obstinacy. It was not possible for him to place himself under the orders of a leader, but the one-sidedness of his political reasoning and striving, and especially the readiness, almost genius, with which he mastered in an instant the whole range of questions which lay within his narrow circle of view, made him unfit to be the leader of a great party; at the same time his talent and character marked him out for the head of a faction of extremists. But a growing ambition kept his eyes fastened upon the White House, which he could never hope to reach through a faction, however devoted to him.[1]

It seems not improbable that the hope of attaining this last goal of his personal wishes so worked upon Calhoun that he tried, before and immediately after the presidential election of 1828, to persuade his nearest party comrades to greater moderation. But as long as the tariff question was not brought to a satisfactory issue, this remained the decisive factor of his policy. Jackson's messages could not content him. As yet, no cause for a breach between the two had been offered, but he began to look upon the president with distrust and resolved to break away from him rather than consent to retrogression on this question for reasons of party politics. The pursuit of his personal wishes did not hinder this resolve, for he was soon con-

[1] Buchanan characterizes Calhoun as follows: "He possessed eminent reasoning powers, but in the opinion of many was deficient in sound, practical judgment. He was terse and astute in argument; but his views were not sufficiently broad and expanded to embrace at the same time all the great interests of the country and to measure them according to their relative importance. It was his nature to concentrate all his powers on a single object, and this, for the time being, almost to the exclusion of all others. Although not eloquent in debate, he was rapid, earnest and persuasive." Buchanan's Administration p. 91.

vinced that Jackson would not aid him in their fulfillment. There had been from the very start a certain coolness in the personal relations of the two men, because Calhoun found that in the construction of the cabinet his friends had not been considered to the extent he had expected and claimed, although Branch of North Carolina, the secretary of the navy, Berrien of Georgia, the attorney-general, and especially Ingham of Pennsylvania, the secretary of the treasury, belonged to his supporters.[1] A year later, Jackson renounced Calhoun's friendship fully and for ever. The cause of this was the discovery of the fact that Calhoun, as Monroe's secretary of war, had expressed the opinion that the general ought to be brought to a reckoning for his conduct in the war against the Seminoles. In the spring of 1831, Jackson deepened and strengthened the breach begun by purely personal enmity by dissolving his cabinet and reorganizing it out of the fraction devoted to Van Buren, Calhoun's old opponent and rival. Calhoun was fully aware that a very great majority of the party was blindly devoted to Jackson in this conflict as well as in all other matters. Personal embitterment and the knowledge that he must abandon, for the near future, every thought of the fulfillment of his hopes for the presidency, put an end to the last doubts over the position which he now had to assume. But to ascribe his course thereafter—as Jackson-Democrats have often done—exclusively or even principally to this motive, is simply ridiculous. The role which Calhoun played for more than a generation in the history of the United States should protect him from being measured with a rule applicable only to a contemptible and crazy demagogue. But besides and above this, the history of the United States is a too significant, serious and instructive chapter in the history of the world to be brought into the domain of trifles by the explanation of its most

[1] Calhoun had not expected to see a larger number of places filled with his friends, but he had tried to have other persons chosen.

significant phases of development as due to the pettiest and most groveling impulses of single individuals, permitted by circumstances to play a part in them.

Calhoun had now given up all hope that the protective system could be destroyed with Jackson's help in the regular parliamentary way. He was not contented with an insignificant reduction of particular duties; he held that the time had come for a decisive step. His state and himself had become so deeply involved that they had to go forward or backward. If they submitted to the repetition of the protest so often recorded against the maintenance of the *status quo*, they were sure of the disgrace of mockery. It would have come hard to the unbridled cavalier spirits of these slave-barons to bear this patiently, even if the fulfillment of their word would have been sure and useless self-sacrifice. But according to their reasoning the prospect for a favorable result from a bold advance was great enough to justify the venture. The apportionment of power between north and south became with every year more unfavorable to the latter. Was it not therefore given wholly to the north to decide, as long as the question was left to congress, whether, when and how far the complaints concerning the unequal pressure of the protective system should be heeded? Must not the other southern states also put this question to themselves? And if they did put it, could they still be willing, after the experience already attained, to wait with "slavish resignation" until the north came to a better understanding and gave ear to the voice of justice? They might shrink back from the path which South Carolina had the courage to tread; but would they not follow if they saw that she reached the goal?

Calhoun not only knew too well the spirit of the people, but was himself too deeply impregnated with it, not to consider the raising the banner of revolution as a dubious expedient. Since the birth-pangs of the republic were endured, the Americans, with the exception of single indi-

viduals, have not fallen into the grave error of considering revolutions as radical means against political evils. Slavish reverence for the government is foreign to an American; it is one of the characteristic and not insignificant traits of political life in the United States that the disregard of the dignity of office often violates the most ordinary rules of courtesy. But this unhealthy expression of the proud consciousness of belonging to a democratic state is found, as a rule, side by side with the much more important feeling, springing from the same consciousness, that the laws are not a hostile force, external to the people, but the expression of its own binding will. Calhoun and his comrades could oppose the government without being obliged to expect to be personally branded on that account as rebels and to have the whole nation against them. But they dared not rest their opposition upon reasons of justice and expediency. They had to bring forward proof that they stood upon a positive right. If Calhoun now applied his whole intellectual strength to the solution of this question, he resorted to no legerdemain. He was not shallow enough to think that revolutions could be fought through by a sophistical whirl of phrases. It is a much-argued question whether he thought it possible that cannon and the hangman could speak the last word in the struggle; but he surely did not think that he could close the mouth of the cannon and cheat the gallows of its victim, while he threw dust in the eyes of the people by using the arts of logic. Of course he wished to show that South Carolina was justified in refusing allegiance to the federal government, but he did not wish to prove by newly-discovered subtleties that forswearing the allegiance that was due—in other words, a revolution—was no revolution. The wish never entered his head to put forward something new, for however unanswerable his conclusions might have been, the nation would have simply laughed himself and his doctrines to political death, if he had pretended to have

brought to light from hitherto unexplored and unknown depths the proofs that a state could *legally* annul the federal authority. Only because he went on a path long known and widely trod, could he nourish a hope for success and trust that, at the worst, hands would not lightly be laid upon him, however enraged and furious men were over his assertion that the path did lead to the goal he described. He simply wished to mark with milestones the whole road from the starting point to the goal that had not only been often pointed out, but had also been already reached, by others, in order that there might be no gap in the path and that the goal itself might be made the sole theme of future discussion. He succeeded in this better than his adversaries did in proving their assertion that he had sought, for the gratification of his hate and ambition, to lead the people upon a path of error which no one before him had had the shamelessness and the criminal audacity to tread. The writings in which he sought the solution of these problems form the largest part of the long chain of practical commentaries upon the constitution, which began with the Virginia and Kentucky resolutions and ended with the four years of civil war. The "South Carolina Exposition," already mentioned, was the introduction to them. The first chapter, the "address to the people of South Carolina," is dated at Fort Hill, July 26.[1]

Calhoun begins with a reference to the fact, seldom rightly estimated, that "the question of the relation which the states and the general government bear to each other is not one of recent origin," but that "from the commencement of our system, it has divided public sentiment."[2] He

[1] Jenkins, The Life of J. C. Calhoun, pp. 161–187; first published in the *Pendleton Messenger*. Compare Calhoun, Works, VI., pp. 124–144.

[2] There are two versions of this important paper. The quotations in this passage are not made from the "address to the people of South Carolina," as it appears in Calhoun, Works, VI., pp. 124–144, but from an "address on the relations of the states and federal government,"

adopted as the basis of his argument the leading sentence in the Virginia resolutions, and said: "The right of interposition thus solemnly asserted by the state of Virginia, be it called as it may—state-right, veto, nullification, or by any other name,—I conceive to be the fundamental principle of our system, resting upon facts historically as certain as our revolution itself and deductions as simple and as demonstrative as that of any political or moral truth whatever." From both points of view, he sought, then, proof for these statements. "The great dissimilarity and, as I must add, as truth compels me to do, contrariety of interests in our country . . . are so great that they cannot be subjected to the unchecked will of a majority of the whole without defeating the great end of government and without which it is a curse,—justice." This is the real, broad foundation of his doctrine that the Union could never have been reared upon another legal basis and could never have an assured foundation upon any other.[1] The state governments are not, he said, the federal government; the states are not subject to the Union. Jefferson had already rightly described them as "co-ordinate departments of a simple and undivided whole,"[2] whose possible disputes on questions of competence—if an agreement could not be arrived at—could be settled only by a convention of the states. Only stupidity, he declared, could raise the cry that he preached anarchy, for here is a court of last resort

(Works, VI., pp. 59–94) which is dated at Fort Hill, July 26, 1831, but which seems to be a preliminary draft of the real "address." The author follows Jenkins's Life of Calhoun. *Translators' note.*

[1] "Who, of any party, with the least pretension to candor, can deny that on all these points (the great questions of trade—of taxation—of disbursement and appropriation and the nature, character and power of the general government) so deeply important, no two distinct nations can be more opposed than this [the plantation states] and the other sections?" Calhoun, Works, VI., p. 134.

[2] Compare a "disquisition on government," Calhoun, Works, I., p 167.

for all cases. Until its decision had been given, the states which find themselves in the minority must evidently be in condition to protect themselves against usurpations. The natural legal means is "nullification," that is, the declaration that the resolves of the majority are null and void, so far as the states taking this action are affected by them. Nullification would self-evidently be absolutely binding upon the federal government, for the doctrine that it can insist with as much right as the respective states upon its interpretation and try to make it good, rests upon the "erroneous assumption that the general government is a party to the constitutional compact."[1] It is really only the "agent," which "the sovereign states" have entrusted with the execution of certain provisions of the compact made by them. This must apply to the supreme court of the United States as well as to the other federal powers, for opposing principles do not underlie the different parts of the constitution. Moreover, the supreme court does not stand above or outside of the constitution, but is simply an agent of the sovereign states; in political questions "its incompetency is not less clear than its want of constitutional authority."[2] After this exposition of his standpoint

[1] Hayne had said in his debate with Webster (Jan., 1830): "Here, then, is a case of a compact between sovereigns, and the question arises, what is the remedy for a clear violation of its express terms by one of the parties [that is, by one of the states or the federal government]?" Elliot, Deb., IV., p. 509. Webster said in reply: "The constitution, it is said, is a compact between states; the states, then, and the states only, are parties to the compact. How comes the general government itself a party? Upon the honorable gentleman's hypothesis, the general government is the result of the compact, the creature of the compact, not one of the parties to it. Yet the argument, as the gentleman has now stated it, makes the government itself one of its own creators. It makes it a party to that compact to which it owes its own existence." Webster, Works, III., p. 343. Calhoun thus wholly agreed with Webster on this point and he was unquestionably much more just to the state-rights doctrine than Hayne with his logical opposition.

[2] Compare a "disquisition on government." Calhoun, Works, I., pp. 264, 322.

on the legal question, Calhoun thoroughly examined the actual point then under dispute, and came to the practical conclusion that the last moment had now come when "through the regular and ordinary process of legislation" a change of circumstances for the better could be brought about; if this momentary chance was not improved, then the suffering section would cease "to look to the general government for relief."

The address was a blow in the water as far as it was directed against the protectionist party. A year and a half before, the question of the relation between the states and the federal government had been thoroughly argued in the senate in the debate over the so-called Foote resolution, which gave no direct cause whatever for such a discussion. General Hayne of South Carolina maintained the side of the state-rights men, and Webster took up the cause of the opposite party. The whole country followed this parliamentary duel with feverish interest. The north joyfully proclaimed Webster as the victor, and the tone of scant assurance with which the south claimed the palm for its champion showed that it acknowledged to itself the superiority of Webster in dialectic vigor, in cutting repartee, and in the command of language. Yet not the slightest change was made in the matter under consideration. Talk and negotiation could not obstruct the march of events. Calhoun, too, naturally did not think of convincing his adversaries. His arguments were mainly directed to his own party, with the view of consolidating it and inspiring it with resolution. The announcement of his resolve to bring his doctrines to practical accomplishment, unless the wrongs of the plantation states were forthwith righted, was of most force with his opponents.

A few weeks afterwards when, in accordance with general expectation, the tariff question again came before congress, there were signs of the beginning of a break in the protectionist ranks. Independently of the political crisis, the

approach of which was scarcely credited, the belief in the American system had been here and there so far shattered that its friends did not promise themselves the best result from the next congressional election. Even Clay felt unsafe. He himself brought in resolutions "for the reduction and removal of certain duties." He met with violent opposition from part of his own party, but the belief that the safety of the future demanded a lowering of the tariff conquered.[1] The secretary of the treasury estimated the probable decrease of the revenue from duties at five million dollars. The plantation states not only found the amount too small, but declared that the whole reduction was a piece of bold and insolent nonsense, since duties exclusively for revenue had been almost the only ones reduced; the small decrease in the protective duties was more than counterbalanced, they said, by the required payment in ready money, the shortening of the time of credit, and the change in the comparative value of the dollar and the pound sterling. South Carolina received the tariff as a sure declaration that the protective system was "the settled policy of the country." Calhoun now exerted his whole influence to have the die cast without delay, and with a firm hand.

July 14, 1832, the tariff had received the sanction of the president, and on August 28 Calhoun developed again, and in a more exhaustive way than hitherto, the whole doctrine of the state-rights party.[2] The arguments are more sharply formulated than in the address, the chain of logical development is more firmly forged, and the final consequences are stated with the utmost clearness. He takes as his starting-point the fact that "so far from the constitution being the work of the American people collectively, no

[1] See the tariff, Statutes at Large, IV., p. 583.

[2] He chose, this time, the form of a letter to Governor Hamilton of South Carolina. Calhoun, Works, VI., pp. 144–193; Jenkins, Life of Calhoun, pp. 195–232.

such political body, either now or ever, did exist. . . . From the beginning, and in all the changes of political existence through which we have passed, the people of the United States have been united as forming political communities, and not as individuals. Even in the first stage of existence they formed distinct colonies, independent of each other, and politically united only through the British crown. In their first imperfect union, for the purpose of resisting the encroachments of the mother country, they united as distinct political communities; and, passing from their colonial condition, in the act announcing their independence to the world they declared themselves, by name and enumeration,[1] free and independent states. In this character they formed the old confederation; and when it was proposed to supersede the articles of confederation by the present constitution, they met in convention as states, acted and voted as states; and the constitution, when formed, was submitted for ratification to the people of the several states; it was ratified by them as states, each state for itself; each by its ratification binding its own citizens; the parts thus separately binding themselves, and not the whole the parts; to which, if it be added that it is declared in the preamble of the constitution to be ordained by the people of the United States, and in the article of ratification, when ratified, it is declared 'to be binding between the states so ratifying,'[2] the conclusion is inevit-

[1] "By name and enumeration." This expression is not in full accordance with historic facts. The title of the declaration is "A Declaration by the Representatives of the United States in Congress Assembled." At the end are the words: "The foregoing declaration was, by order of congress, engrossed and signed by the following members." Then follows the signature of the president, under this the names of the states, and under each state the names of its representatives.

[2] This quotation is not correct. Article VII. of the constitution reads: "The ratification of the convention of nine states shall be sufficient for the establishmeut [not binding] of this constitution, between the states so ratifying the same."

able that the constitution is the work of the people of the states, considered as separate and independent political communities. . . . The first and . . most important result [of these facts] is that there is no direct and immediate connection between the individual citizens of a state and the general government. The relation between them is through the state. . . . It was only by the ratification [of the federal constitution] of the state that its citizens became subject to the control of the general government. . . . It belongs to the state as a member of the Union, in her sovereign capacity in convention, to determine definitely, as far as her citizens are concerned, the extent of the obligation which she contracted; and if, in her opinion, the act exercising the power [in dispute] be unconstitutional, to declare it null and void, which declaration would be obligatory on her citizens." This right "flows directly from the relation of the state to the general government on the one side, and its citizens on the other." Its exercise is not the abrogation of an act of the federal government by the state, but by the constitution; nullification is "the great conservative principle" of the Union. "Not a provision can be found in the constitution authorizing the general government to exercise any control whatever over a state by force, by veto, by judicial process, or in any other form,—a most important omission, designed, and not accidental." And the actual state of the case corresponds with the right, for "it would be impossible for the general government, within the limits of the states, to execute, legally, the act nullified, . . . while on the other hand the state would be able to enforce, legally and peaceably, its declaration of nullification," since the citizens of the state "would be found in all the relations of life, private and political, to respect and obey it; and, when called upon as jurymen, to render their verdict accordingly, or, as judges, to pronounce judgment in conformity with it." An appeal to the United States supreme

court would be of no use, for "what would it avail against the execution of the penal enactments of the state, intended to enforce the declaration of nullification? . . . Beaten before the [state] courts, the general government would be compelled to abandon its unconstitutional pretensions, or resort to force; a resort, the difficulty (I was about to say the impossibility) of which would very soon fully manifest itself, should folly or madness ever make the attempt." Moreover, the calling out of the military power of the Union would be wholly useless, because no opponents would be found, for "it would be . . a conflict of moral, not physical, force." The legal relation between the nullifying state and the federal government would be by no means broken up. The decision of one concrete question between them would simply be delayed until the sovereign parties to the union compact had deliberated over it. If the power of the federal government in question was confirmed by three-fourths of these parties, then the suspension of its exercise caused by nullification had reached its end.[1] Yet it is not to be understood that the nullifying state would in every case be unconditionally bound by such a decision. This is, of course, the rule, and the scope of the rule is so great that a convention of states may properly be called, not only a court of last

[1] This gave one-fourth of the states the power to deprive the federal government of every power entrusted to it, that is, to alter the constitution at will. But, according to Article V., the constitution can be amended only by the consent of three-fourths of all the states. Moreover, in the case in point, the "suspension" of the questioned power is in such flagrant contradiction to another provision of the constitution that the state-rights party did not try to dispute it, but pushed it aside by appealing to their general line of argument. Nullification forbade the collection of all customs, but the constitution (Article I., Sec. 8, §1) says: "All duties, imposts, and excises shall be uniform throughout the United States." If the general government was bound to respect nullification, it was obliged by this passage of the constitution to stop the collection of all customs in all the other states, until "the sovereign parties" decided between it and South Carolina.

resort, but also a court of final decision. But "in the case stated, should the other members undertake to grant the power nullified, and should the nature of the power be such as to defeat the object of the association or union, at least as far as the member nullifying is concerned, it would then become an abuse of power on the part of the principals, and thus present a case where secession would apply; but in no other could it be justified, except it be for a failure of the association or union to effect the object for which it was created, independent of any abuse of power." In this case "force might, indeed, be employed, . . . but it must be a belligerent force, preceded by a declaration of war, and carried on with all its formalities." For the seceded state "would stand to them [the other states] simply in the relation of a foreign state, divested of all federal connection, and having none other between them but those belonging to the laws of nations."

Thus the question of the relation of the states to the government of the Union, and to the Union itself, received its definite answer, on this side, in this theory. Everything afterwards brought forward by the state-rights party was only a repetition or a more exact expression of particular principles. Thirty years later the south carried out this programme piece by piece, and based its justification of its course, point by point, upon this argument.

Calhoun had not claimed the right of nullification for the state legislatures. The sovereignty of the state was the one premise upon which he built up, in logical sequence, his whole argument; therefore an action of the state "in its capacity as a sovereign," that is, the decision of a state convention, was necessary in order to decide, in a binding way, whether or not the state had trusted the common agent of the league of states with a certain power.[1] On this point, the plans of the nullifiers had already

[1] Yet in the essay of a later date, a "disquisition on government" (Works, I., p. 241), he says: "Nothing short of a negative, absolute or

once come to grief. A motion to call a convention had been made in the legislature, but it did not receive the necessary majority of two-thirds. But the anti-nullification party, despite the greatest efforts, was no longer able to fill a third of the seats in the legislature. Oct. 24, the senate, by thirty to thirteen votes, and the house, by ninety-nine to twenty-five, resolved to call a convention on the 19th of November at Columbia.[1] The convention, which contained members of nearly all the influential families of the states, chose Gov. Hamilton as its chairman. A committee appointed by him reported, through Gen. Hayne, a nullification ordinance, which was adopted, Nov. 24, by a large majority.[2] It declared the tariff of May 19, 1828, and that of July 14, 1832, null and void; instructed the legislature to pass the laws and take the other measures necessary for enforcing the ordinance and preventing the collection of the duties imposed by the nullified laws; forbade an appeal from the state courts to the United States supreme court in suits in which the authority of the ordinance, the binding power of the laws passed in consequence of it or the validity of the nullified laws came into question; commanded the state judges to have their judgments executed without regard to any such appeal and to punish persons who did appeal for contempt of court; demanded from all the officials of the state, under penalty of instant dismissal, an oath to recognize and fulfill the ordinance and all laws passed in consequence of it; provided that a similar oath should be taken by jurors when the legality of the ordinance and of these laws came into

in effect, on the part of the government of a state, can possibly protect it against the encroachments of the united government of the states, whenever their powers come in conflict."

[1] Niles' Reg., XLIII., p. 175.

[2] The ordinance is given in full in Deb. of Congress, XII., p. 30; Niles' Reg., XLIII., p. 219; Benton, Thirty Years' View, I., p. 297; and in many other places.

question; and announced that every measure of coercion on the part of the federal government would be regarded "as inconsistent with the longer continuance of South Carolina in the Union; and that the people of this state will thenceforth hold themselves absolved from all future obligation to maintain or preserve their political connection with the people of the other states, and will forthwith proceed to organize a separate government and do all other acts and things which sovereign and independent states may of right do." The convention then adjourned until March in order to await the decision of congress.

The legislature assembled November 27. The governor declared, in his message,[1] that the ordinance of nullification had become "a part of the fundamental law of South Carolina." The legal question could no longer be mooted; "it is enough that she [South Carolina] has willed it." It was now the part of the legislature, he said, to ensure obedience to the ordinance by penal enactments, to define the crime of high treason against the state, and to provide everything that would be necessary in case the federal government should seek to compel obedience to its usurpatory laws. For the latter purpose, he asked for a thorough reform of the militia organization and the authorization of the enlistment of two thousand volunteers for the defense of Charleston and of ten thousand more from the rest of the state.

The legislature came promptly up to all these requirements. A law gave the owners of goods attached on account of the non-payment of duties the right to regain possession of them by a writ of replevin, that is, authorized the use of force, if the goods were not voluntarily delivered to the sheriff by the custom-house officials.[2]

[1] Niles' Reg., XLIII., p. 259.

[2] See Grundy's speech in the senate. Niles' Reg., XLIII., Suppl., p. 215. Compare, too, Webster, Works, III., pp. 491, 492; Kent, Comm., III., pp. 624, 625.

Moreover, the sheriff was empowered, in case of refusal, to levy on the private property of the custom-house officials to an amount double that of the goods detained. Whoever opposed the execution of this law was to be punished by fine and imprisonment. Similar punishments were threatened against those who lent their aid in any way whatever to the execution of those judgments of the federal courts which were based on the supposition of the efficacy of the nullified laws. Other laws prescribed the oath to support the ordinance of nullification and gave the governor the power he asked to put the state in a condition for defense and to bring armed force into play if it seemed at any time necessary. Webster affirmed that the law first mentioned fell far short of the ordinance.[1] But Grundy summed up a masterly analysis of it by saying that South Carolina had thereby "legislated the federal government out of the state."

The ordinance of nullification put Jackson into a fury. On December 11,[2] he issued, as an answer, his famous "proclamation," in which he tried to refute the nullification doctrine and made known his resolve to watch over the full execution of the law, in accordance with his oath of office, with all the powers entrusted to him by the constitution. The proclamation united clear and genuine statesmanlike reasoning with warm and tender pathos. It made a deep impression at the north.[3] It brought keenly

[1] Webster, Priv. Corres., I., p. 530.

[2] This date is given in the Statesman's Manual, II., pp. 890–903. Moreover, in the message of Jan. 16, 1833 (Ibid, II., p. 904), is the expression, "My proclamation of the eleventh of December last." But Benton, Thirty Years' View, I., p. 299; Colton, Works of Henry Clay, II., p. 218; Curtis, Life of Webster, I., pp. 433, 465; Elliot, Deb., IV., p. 582; Hunt, Life of Edward Livingston, p. 371, and all the other works which I can recall to mind (except Parton, Life of Jackson, III., p. 467), give the date of Dec. 10. I know no explanation for this.

[3] Neumann, Gesch. der Ver. Staaten, II., p. 499, says: "But all the credit belongs to the president; to him alone belongs all the glory of the in-

to the consciousness of the south the miserable, mongrel condition of that section. The south looked unfavorably upon South Carolina's action, and was well contented that the reckless, energetic man at the head of the government promised to lead the Union safely through this crisis. But, on the other hand, South Carolina had only gone a step beyond the rest of the south in the development, and especially in the practical application, of the state-rights doctrine. The unconditional supremacy claimed by the proclamation for the laws of the Union and the promise of their protection by force, if necessary, could therefore gratify this section but little.[1] South Carolina was not alone in asking where Jackson's swords and cannon were, when Georgia publicly and scornfully transgressed the laws of the Union. Why was that now so great a crime

disputable contents of the proclamation as well as of its fiery eloquence. Occasional improvements in the wording may be due to that master of style, Edward Livingston. There is, however, not the slightest ground for ascribing the whole proclamation to Livingston, as Hunt has done in his recent biography, Life of Edward Livingston." That the uncultured Jackson was not able to compose this state paper, needs no proof. That Jackson should not be without credit for it, appears very plainly from Hunt's story (pp. 371–381). Jackson gave it its character which is expressed in the words so often quoted: "The Union must and shall be preserved." The remainder is surely, in the main, Livingston's work. Neumann's authority is Parton, of whom he himself (II., p. 487) says: "The biographer of Jackson writes a novel, calculated to produce effect, and calls it history." And Parton's witness is Major Lewis, a friend and enthusiastic admirer of Jackson, to whom Parton is indebted for endless masses of presidential "kitchen-gossip." Livingston, whose name is even now mentioned with great respect by the greatest European jurists, does not deserve to be put off with the description "a master of style." Compare, moreover, Neumann, II., p. 471.

[1] Clay himself wrote, Dec. 12, to Judge Brooks: "As to the proclamation, although there are good things in it, especially what relates to the judiciary, there are some entirely too ultra for me, and which I cannot stomach. A proclamation ought to have been issued weeks ago but I think it should have been a very different paper from the present, which I apprehend will irritate, instead of allaying any excited feeling." Colton, Works of Clay, II., p. 219.

upon which the president then looked with scarcely concealed satisfaction? Did not his oath of office impose the same duties upon him then? Was the supremacy of a tariff-law of a higher sort than that of treaties? Why must a sovereign state now most obediently entreat the United States supreme court to inform it of the limits of its rights, when then a state no more sovereign could angrily reject the decision of that court, made in all form, as a revolting assumption, without receiving even a warning reproof from president or congress? South Carolina knew that no answer could be given to all these questions, and therefore did not fail to put them. But she was too proud and too prudent to look upon them as the anchor which held fast her cause. Calhoun's "indubitable historic facts" and his "simple deductions" from the constitution had to remain the ground upon which she took her stand, if she wished not only to escape without punishment, but to reach her immediate aim and protect herself against all future contingencies.

Hamilton's term of office had meantime expired, and in his stead Hayne became governor of South Carolina. The seat thus left vacant in the United States senate was given to Calhoun, who had resigned the vice-presidency. In the presidential election, the state took only a formal part, since it supported the candidates of neither party.[1] All this showed that the nullification resolution was not simply a piece of headstrong nonsense. Jackson's proclamation did not terrify the state. It only made it the more defiant. Its reading in the legislature was accompanied by loud laughter and jesting commentaries.[2] Hayne was requested by a formal resolution of both houses to issue a counter proclamation. He responded to the request in a way which satisfied even the most embittered "fire-eaters"

[1] John Floyd of Virginia and Henry Lee of Massachusetts were the men of straw who received the electoral votes of South Carolina.

[2] Niles' Reg., XLIII., pp. 287, 288.

among the nullifiers.[1] Jackson's command to the custom-house officials to continue in the discharge of their duties at every risk, the mission of General Scott and the appearance of ships of war before Charleston were answered by redoubled zeal in the hastening of preparations for war. Meanwhile, congress had again come together. Calhoun's arrival was waited for with the greatest suspense. The galleries were filled to overflowing as he took the oath to the constitution. The firm repose with which he did so did not fail to make a deep impression. Only a few denied that he was personally a man of the strictest morality, and it was therefore said that he must be fully convinced of the truth of his doctrine and would not lightly abandon it. Still less was it doubted that Jackson would fulfill his word, if South Carolina made good her own of February 1. The minds of men were therefore heavy with care, for nearly all agreed that bloodshed might draw after it the most incalculable results. But yet an indefinite faith that the danger would be averted was discernible through the expression of the worst fears. Deeply in earnest as both Jackson and South Carolina were, it was nevertheless to be seen from the first that they would reciprocally try hard to avoid an armed collision. This feeling did not easily gain possession of the energetic soldier who had always looked upon the presidency as the headship of an army. But with all his great and eventful faults, he possessed the one virtue of a true patriotism and a warm feeling for the whole people. If the sword must be drawn, then it would certainly not be sheathed again—as far as this depended upon him—until South Carolina's resistance had been wholly broken down, even if the whole Union had first to be bathed in blood. But with whatever soldierly joy he had fought against England and the Indians, he did not wish to draw the sword against his fellow-citizens, if it could possibly be

[1] Niles' Reg., XLIII., pp. 308–312.

avoided, for he feared that there would perhaps be need of long and hard work before quiet was again restored. If congress and South Carolina agreed, on the basis of a thorough and comprehensive modification of the tariff, upon the conditions of a settlement, Jackson certainly would not refuse his consent. The limits of the indirect participation in the legislative powers granted to the president by the constitution could not rightly be so narrowly drawn by him that he could hold or declare himself unauthorized to veto a tariff bill because—and simply because—it seemed to him desirable to subject the doctrine of nullification to the ordeal by fire. But Jackson could give his sanction to a tariff modified in the interests of free trade in and for itself, without yielding the slightest point, since he had already recommended, since his entrance into office, a modification of the existing tariff.

His patriotic care had an influence, too, upon South Carolina, for it is simply laughable, from party spirit or for the sake of heightened dramatic effect, to give such a view of the strife that Calhoun and his comrades seem to have lost, through ambition, personal hatreds, or fanaticism, all national spirit. Any chance might, indeed, have let the flood of passion break through the dam of national feeling, if it had not been held back by the strongest dictates of political prudence. The nullifiers evidently considered it practically almost impossible for the federal government to try to cut through the knots; but their judgment remained sober enough to let them see that they would compel the government to use force if they first resorted to it. They might perhaps have thus hurled the whole Union into chaotic confusion, but in no event could they have attained their ends. The moment they removed the question from the domain of law their cause was hopelessly lost. They did not lose sight of this for an instant. The convention had issued, before its adjournment, an

"address to the people of the United States,"[1] in which it expressly declared that, as far as lay within the power of South Carolina, matters would not come to bloodshed. It announced, indeed, on this point, that this would be avoided by the secession of the state.[2] We need not inquire here how far this means would have corresponded with the end proposed. The nullifiers considered it probable, but by no means as indubitable as they pretended, that such a solution of the struggle could be brought about without opposition.[3] Then, too, they followed up this assurance, which was, at best, of only negative value, with a positive offer. The address explained that South Carolina made, in this, "a concession," and declared that she could only content herself with the plan of taxation she proposed, "provided she is met in due time and in a becoming spirit by the states interested in the protection of manufactures." If this way of proposing a compromise was little adapted to make its adoption possible, the proposed tariff system itself was absolutely unacceptable to the manufacturing states, and even wholly absurd in and for itself.[4] Yet too much weight must not be laid upon

[1] Niles' Reg., XLIII., pp. 231–234.

[2] "In order to obviate the possibility of having the history of this contest stained by a single drop of fraternal blood, we have solemnly and irrevocably resolved that we will regard such a resort [to military or naval force] as a dissolution of the political ties which connect us with our confederate states; and will forthwith provide for the organization of a new and separate government."

[3] A very considerable part of the state-rights party rejected the right of nullification, but acknowledged that of secession. In the legislature of South Carolina, Barnwell Smith commented with especial sharpness on Jackson's proclamation, as containing "the tyrannical doctrine that we have not even the right to secede." Niles' Reg., XLIII., p. 288.

[4] "We believe that upon very just and equitable principles of taxation, the whole list of protected articles should be imported free of all duty, and that the revenue derived from import duties should be raised exclusively upon the unprotected articles, or that whenever a duty is im-

this. The main thing was, that South Carolina had shown her readiness to agree eventually upon a compromise. If congress made no offers whatever in answer to this, she could, with at least a certain appearance of justice, make it responsible for the consequences.

Jackson and the nullifiers thus not only sought each to force upon the other the dice-box for the final cast, but they met each other with a secret wish that it might not be grasped until congress had been compelled to again take part in the play. The protectionist majority was thus put in a dilemma. The extreme fraction, belonging to the New England states, was not willing to buy peace at all, and especially not at the cost of the manufacturers. The majority would gladly have played the part of spectators.[1] But inactivity would have imposed no less responsibility upon it than a positive decision, and if there was a general agreement to bring the tariff again under discussion it was thereby already practically decided that some sort of compromise offer would be made to South Carolina. Such a small majority could not preserve an unbroken front in such a crisis, after it had been already thrown into fear and trembling before the crisis culminated.

Jackson had stated, in his annual message of Dec. 4, that the needs of the treasury allowed a further reduction of the national income, and had recommended the removal

posed upon protected articles imported, an excise duty of the same rate should be imposed upon all similar articles manufactured in the United States. . . But we are willing to make a large offering to preserve the Union; and, with a distinct declaration that it is a concession on our part, we will consent that the same rate of duty may be imposed upon the protected articles that shall be imposed upon the unprotected, provided that no more revenue be raised than is necessary to meet the demands of the government for constitutional purposes, and provided, also, that a duty substantially uniform be imposed upon all foreign imports."

[1] Clay writes, Dec. 12, 1832: "Congress has not been called upon, and I sincerely hope it may not be necessary to call upon it, in this unfortunate affair." Private Correspondence of H. Clay, p. 345.

of "those burthens which shall be found to fall unequally upon any . . [of] the great interests of the community."[1] This part of the message had been referred to the committee on ways and means, which reported, Dec. 27, the so-called Verplanck bill.[2] The bill went back to the tariff of 1816, and put part of the duties still lower than that had. Verplanck himself estimated the decrease in the customs revenue at $13,000,000, compared with the tariff of 1828, and at $7,000,000 in comparison with that of 1832. Since this reduction was to take place in the course of two years, it almost amounted to a complete abandonment of protection, and a great part of the manufacturing establishments would have been hopelessly ruined. Yet the protectionists feared that the bill would be passed by the house, and then perhaps also, although not without a hard struggle, by the senate.[3] A month before such a radical change would have been held impossible, and even now, despite nullification, the adoption of the bill would not have been feared if it had not been generally regarded as an "administration bill." Experience had already repeatedly shown how terrible an influence Jackson could exercise, and the message had already given it to be understood, clearly enough, that he was ready to go as far

[1] Statesman's Manual, II., p. 785.

[2] Verplanck brought in the report accompanying the bill, Dec. 28. Debates of Congress, XII., p. 128.

[3] Webster wrote, Jan. 3, 1833, to W. Sullivan: "But our more imminent danger, in my opinion, is that, seizing on the occasion, the anti-tariff party will prostrate the whole tariff system. You will have seen the bill reported by Mr. Verplanck. Great and extraordinary efforts are put forth to push that bill rapidly through congress. It is likely to be finally acted upon, at least in the house of representatives, before the country can be made to look on it in its true character. On the other hand, our friends will resist it, of course, and hold on to the last. . . . If the bill were now in the senate, it would not pass; but how far individuals may be brought over by party discipline in the drill of a month, it is impossible to say." Webster, Priv. Corresp., I., pp. 528, 529.

as this.[1] Webster affirmed that Jackson would have preferred to coerce the nullifiers without making any concessions to them, and afterwards to modify the tariff, but that his party pressed him forward, because it feared the effect of the doctrines developed in the proclamation.[2] But the friends and admirers of the president declared that he aided the compromise bill by all the means in his power.[3] But he did not on this account abandon the position taken in the proclamation. When he learned how the latter had been received in South Carolina, he sent to congress a message[4] which was couched in a more moderate tone, but which asked for the grant of extraordinary powers. He

[1] His argument, indeed, inclined to both sides, but the summary declared: "Those who have vested their capital in manufacturing establishments cannot expect that the people will continue permanently to pay high taxes for their benefit, when the money is not required for any legitimate purpose in the administration of the government. Is it not enough that the high duties have been paid as long as the money arising from them could be applied to the common benefit in the extinguishment of the public debt?" Yet he still held fast to the belief that an exception should be made in favor of those things which were absolutely necessary for the safety of the land in time of war.

[2] "I do not believe the president himself wishes the bill to pass. *E contra*, I fancy he would prefer the undivided honor of suppressing nullification now, and to take his own time hereafter to remodel the tariff. But the party push on, fearing the effect of the doctrines of the proclamation, and endeavoring to interpose and to save Carolina, not by the proclamation, but by taking away the ground of complaint." Webster, Priv. Corres., I., p. 529.

[3] Benton writes: "Many thought that he ought to relax in his civil measures for allaying discontent, while South Carolina held the military attitude of armed defiance to the United States,—and among them, Mr. Quincy Adams. But he adhered steadily to his purpose of going on with what justice required for the relief of the south, and promoted, by all the means in his power, the success of the bills to reduce the revenue." Thirty Years' View, I., p. 308. On Jackson's position on the tariff question, in the spring of 1832, compare Reminiscences of J. A. Hamilton, p. 243; see also A. H. Stephens, The War between the States, I., p. 440.

[4] Jan. 16, 1833. Statesman's Man., II., pp. 904–922.

stated that he had ordered, from motives of "precaution," the transfer of the custom-house from Charleston to Castle Pinckney, and now wished to be authorized "to alter and abolish such of the districts and ports of entry as should be necessary and to establish the custom-house at some secure place within some port or harbor of such state."[1] Only in case this did not prove enough and "in case of an attempt otherwise to take the property [attached for non-payment of duties] by a force too great to be overcome by the officers of the customs," did he ask the right to use the land and sea forces to execute the law.

Calhoun answered the message by introducing a series of resolutions concerning the powers of the federal government.[2] His whole theory of state rights was therein compressed into a few sentences, but the offensive word "nullification" was not used. Yet he went as far on his side as Jackson had on his. On the main fact he held fast, unterrified, to his position, but gave it to be understood that he did not wish to run the risk of the danger of preventing a compromise for the sake of trifles.

The state of affairs was much more rightly described by this than by the character which the debate soon afterwards took in the senate. The message of the president had been referred to the judiciary committee, which brought in a bill, Jan. 21, intended to ensure, that is, to make possible, the collection of customs in South Carolina.[3] The whole body of state-rights men denounced it in the most unmeasured language and soon fastened the irritating name of "force bill" upon it. Before the debate proper began,

[1] He gave as a reason for this request that the same measures of precaution could not be taken in the harbors of Georgetown and Beaufort as in Charleston.

[2] Jan. 22, 1833. Deb. of Congress, XII., p. 23.

[3] The bill was naturally framed in such a way that it applied, in form, to the whole extent of the Union. It is given, in the shape in which it was finally adopted, in Stat. at L., IV., p. 632 and also in Niles' Reg., XLIII., Suppl., p. 46.

it had already become evident that the bill would by no means be quickly passed. Mangum of North Carolina and Bibb of Kentucky moved to postpone the debate. The latter gave as his reason that this was not the best time for the discussion of principles of such an exciting character; "events" might soon happen which would make the debate less exciting.[1] The senate adopted a compromise motion of Clay, in accordance with which the debate began Jan. 28. The senate had thus coincided with Mangum's remark that congress could not come to a conclusion before February 1, the day on which the ordinance of nullification was to come into force. But not much importance was attached to this circumstance, although it was to be expected, from the previous talk of both parties, that the greatest weight would be laid upon it. Bibb was evidently not alone in expecting the "events" to which he had referred. And the expectations entertained were not disappointed. South Carolina was in no more of a hurry to let nullification come into force than congress had been to pass the "force bill." A "suspension" of the ordinance was voted, in order to wait and see what congress would do.[2] Thus both sides reached an equally broad water-way, by which the harbor must finally be entered, if neither party suddenly turned around the rudder. This explains the significance of the wild war of words which now began in congress. It was neither a stage-contest for the amusement of the public nor a womanish wrangle about a mere matter of dogmatism. It bore from the first instant the stamp, not of a struggle which was to culminate straightway, but of one which had just happily passed its culminating point.

Wilkins of Pennsylvania, as chairman of the judiciary committee, opened the debate. The ground-thought of his

[1] Niles' Reg., XLIII., Suppl., p. 51.
[2] Ibid, p. 382.

speech was that nullification was a practical dissolution of the Union, for it overthrew the principle of the supremacy of the law. The passage of the bill was therefore not only justified, but absolutely necessary, for its provisions went just far enough to maintain the authority of the Union if South Carolina tried to execute the nullification laws. For the rest, the bill was not, as the Opposition had affirmed, of an extraordinary character. The committee could fortify itself with precedents on every point, or at least could cite cases in proof that its proposals were in the fullest harmony with previous laws. The only new thing was the provision which gave the president the right to move custom houses, and this was simply intended "to avoid, if possible, all collision."[1]

Bibb of Kentucky was the first speaker of the Opposition. He said not a word in defense of nullification, but he threw himself, with the state-rights shield of *noli me tangere* between the nullifiers and the federal authorities; the bill, he said, "authorizes a declaration of war against the state of South Carolina, a declaration of war by proclamation of the president and at his discretion, not upon the basis of facts."[2] But his whole speech was on what the federal authorities could *not* do; the positive side of the question—the way in which they could defend themselves and the Union against a nullification of the laws of the Union—he left untouched. If his whole reasoning were summed up—something which the orator naturally failed to do—and the practical result asked for, the only possible answer was that a return, in essentials, to the standpoint of the articles of confederation was demanded.

[1] Niles' Reg., XLV., p. 60. The two last points were much more strongly put by Frelinghuysen and Grundy. The latter said: "Is this making war? So far from it, it is the most pacific course that could be presented; it is retreating from threatened violence, and this is done upon the recommendation of him who never retreated to secure his own personal safety." Ibid, pp. 53, 88, 216.

[2] Ibid, p. 65.

These articles had given congress many rights, but had withheld from it the power to make good its rights. According to the doctrine of the anti-nullification state-rights party, the constitution gave the federal government sufficient rights, and gave it means which would have sufficed for the enforcement of these rights, but it had not given it the power to use these means, if a state objected to the exercise of the rights. Nullifying and anti-nullifying state-rights men came to substantially the same belief because they started with the same hypothesis. Bibb affirmed: "Sovereignty rests in the people of each state."[1] Tyler formulated the creed of the party still more sharply by saying that he owed obedience to the laws of the Union, because he owed allegiance to Virginia.[2]

The other speakers of the Opposition followed without exception in Bibb's footsteps. The most interesting thing in their speeches was the crowd of historic illustrations. Not many states could boast that they had never done priest's service at the altar of state sovereignty and had not praised as the flames of holy sacrifice what they now denounced as a Moloch's fire.

The debates had already continued fourteen days and, despite all the eloquence and dialectic sharpness shown by both parties, the goal was not a single step nearer. Clay

[1] McDuffie said in an after-dinner speech: "I will readily concede that a state cannot nullify an act of congress by virtue of any power derived from the constitution. It would be a perfect solecism to suppose any such power was conferred by the constitution. This right flows from a higher source. All that I claim for the state in this respect necessarily results from the mere fact of sovereignty." Niles' Reg., XLIII., pp. 41, 42.

[2] "It is because I owe allegiance to the state of Virginia that I owe obedience to the laws of this government. My state requires of me to render such obedience. She has entered into a compact which, while it continues, is binding on all her people. So would it be if she had formed a treaty with any foreign power. I should be bound to obey the stipulations of such a treaty because she willed it." Ibid., XLIII., Suppl., p. 104.

therefore asked the senate, February 12, to allow him to bring in a bill to modify the tariff laws.[1] Calhoun spoke in favor of granting the permission. He could not give his consent to all the details of the bill, but its "general principles" and its "object" had his "entire approval." "A very large capital," he continued, "has been invested in manufactures, which have been of great service to the country; and I would never give my vote to suddenly withdraw all those duties by which that capital is sustained in the channel into which it has been directed." The settlement of the minor points of difference would present no difficulty if men met each other "in the spirit of mutual compromise . . . without at all yielding the constitutional question as to the right of protection."[2]

Now, in fact, nothing remained but to come to an understanding on the "minor points of difference." After the leaders of the protectionists and the leaders of the nullifiers announced that they had agreed with each other on the main points of the arrangement, the latter was assured even if a hot battle had to be fought for its sake. Webster declared that he found principles in the bill, to which, as far as he could now see, he could never give his approval. The extreme wing of the protectionists, too, had not previously been won over to support the compromise,[3] and it was strong enough to make the slightest discord between the new allies a serious danger. But the whole history of party up to that time had not seen stranger bedfellows than Clay and Calhoun were at that instant. They had begun their political career as brothers in arms, but now

[1] Deb. of Cong., XII., p. 81; Clay, Speeches, II., p. 139, seq.

[2] Deb. of Congress, XII., pp. 84, 85.

[3] Benton relates that Clay had advised Webster of his intentions, but that the latter had opposed it, saying: "It would be yielding great principles to faction and that the time had come to test the strength of the constitution and the government." On this account, he had not been admitted to the further negotiations. Benton, Thirty Years' View, I., p. 342.

they had so thoroughly fallen away from each other that they did not even speak to one another. Even now, no change was made in their personal relations. Party spirit and personal enmity have used this circumstance in order to stamp Calhoun as a "coward." Benton relates that Calhoun accepted Clay's conditions after he had been told by Letcher, a Kentucky representative, that Jackson wished to hear of no "negotiation," but was resolved to have him imprisoned and tried for high treason.[1] Clayton, senator from Delaware, also declares that Calhoun's motive was fear lest Jackson should let him "hang."[2] In this case, too, persistent repetition has sufficed to make the assertion of extreme partisans become in the popular mind an historic fact. It has never once been asked whether it was in any way possible for Jackson to "hang" the "arch-traitor." Jackson was enough of an autocrat not to let Americans, proud of their freedom, look back with too great satisfaction upon this chapter of their history. They need not at least boast, upon the most dubious testimony, that he had not an evil pleasure in acting, as president, with the same arbitrary brutality that he had shown as a general in hunting down Indians. Yet the law and Jackson's will were not always absolutely identical, and however certainly Calhoun, according to the European ideas of state rights, may have been guilty of high treason, it would have been difficult to have convicted him of it, under the provisions of the constitution.[3]

[1] Benton, Thirty Years' View, I., p. 343.

[2] Ibid, II., p. 113; Colton, Works of Clay, Speeches, II., p. 125.

[3] "Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court." Art. III., Sec. 3, § 1. In the decision of the supreme court in the cases *Ex parte* Bollmann and *Ex parte* Swartwout, it is said: "To constitute that specific crime, . . . war must actually be levied against the United States. However flagitious may be the crime of conspiring to

Calhoun was well enough acquainted with the decisions of the supreme court in the cases of Burr and Bollmann not to be as much frightened by the first dark threat which came to him, at third or fourth hand, as, after a truce was agreed upon, his bitterest opponents affirmed. Only the partisan and the special pleader can lay weight on bits of history which have happened in the night and without a witness. As long as better proofs are not brought forward, the objective historian must confine himself to Calhoun's public actions and omissions. There is no justification in them for the supposition that, on account of anxiety about his personal safety, he caught quickly at the chance when an opportunity to capitulate was offered him.

February 15 and 16, Calhoun delivered a speech on the force bill.[1] It was couched, for the most part, in the measured, doctrinaire tone of a logical discussion. Yet in parts it fell into pathos, which was, indeed, not free from declamation and exaggeration, but which certainly did not show fear. Calhoun did not seek to avoid by humility and flattery the blow which it was alleged that Jackson wished to

subvert by force the government of our country, such conspiracy is not treason. To conspire to levy war and actually to levy war, are distinct offences. The first must be brought into open action by the assemblage of men for a purpose treasonable in itself, or the fact of levying war cannot have been committed. . . It is not the intention of the court to say that no individual can be guilty of this crime who has not appeared in arms against his country. On the contrary, if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors. But there must be an actual assembling of men for the treasonable purpose to constitute a levying of war. . . It is therefore more safe, as well as more consonant to the principles of our constitution, that the crime of treason should not be extended by construction to doubtful cases." Cranch, Rep., IV., pp. 126, 127; Curtis, II., pp. 36, 37. Compare also Cranch, IV., pp. 468–509.

[1] Calhoun, Works, II., pp. 197–262; Jenkins, Life of Calhoun, pp. 251–300.

strike. He had exasperated him both as president and as an individual and he well knew the hard feelings and the wild passionateness of the man, but he had a conciliatory word neither for the president nor for the individual. From motives of "decorum," he refrained from answering the personal attacks of the president, but he accused him in the sharpest language of breach of faith and of ingratitude towards South Carolina. On the essential question, he led the fight to the farthest point it had yet reached. As if with an inner satisfaction, he named everything plainly by its right name and he sought the strongest words with which to characterize his opponents and their policy. "You propose by this bill," he said, "to enforce robbery by murder. . . Force, indeed, may hold the parts together, but such union would be the bond between master and slave. . . . I tell you plainly that the bill, should it pass, cannot be enforced. It will prove only a blot upon your statute-book, a reproach to the year and a disgrace to the American senate. I repeat, it will not be executed; it will rouse the dormant spirit of the people and open their eyes to the approach of despotism. The country has sunk into avarice and political corruption from which nothing can arouse it but some measure on the part of the government of folly and madness, such as that now under consideration. . . . I proclaim it, that, should this bill pass and an attempt be made to enforce it, it will be resisted at every hazard—even that of death itself. . . . There are thousands of her [South Carolina's] brave sons who, if need be, are prepared cheerfully to lay down their lives in defense of the state and the great principles of constitutional liberty for which she is contending. God forbid that this should become necessary! It never can be, unless this government is resolved to bring the question to extremity, when her gallant sons will stand prepared to perform the last duty—to die nobly."

Webster answered this speech on the day Calhoun ended

it,—Feb. 16.[1] His theme was not the force bill, but the right of nullification and secession. He paid a full recognition to the dialectic keenness of the Carolinian, but yet declared that he might be compared to a strong man who sunk the deeper in a bottomless quagmire, the more tremendous efforts he made to extricate himself. He compared with classic simplicity and clearness, the subtle, logical deductions from legal abstractions with the demands of sound common sense. His argument started out with the idea that the state and government, the state and the supremacy of law, were conceptions, each of which absolutely involved the other, and that the rejection, on principle, of the supremacy of the law therefore could not be the basis of the right of a state. Each state exists, he said, for the sake of "its peculiar . . duties" and its constitution contains the fundamental rules, in accordance with which the fulfillment of these duties must be sought, and can alone be legally sought. A constitution, the first important sentence of which negatives the idea of the state, is therefore no constitution; a state with such a constitution is no state. The right of nullification and the conception of the state absolutely exclude each other. Nullification and secession "presuppose the breaking up of the government. . . The constitution does not provide for events which must be preceded by its own destruction. . . . The constitution of the United States was received as a whole and for the whole country. If it cannot stand altogether, it cannot stand in parts; and if the laws cannot be executed everywhere, they cannot long be executed anywhere." How can law be spoken of when the construction and interpretation of the law are not one and the same in all the twenty-four states, but every single one of these has finally to decide upon its legally binding force? Have not twenty-three states the same right to a belief that one

[1] Webster, Works, III., pp. 448–505.

has? And if twenty-three states cherish the conviction that they have the right to execute the law in opposition to one state, is the judgment of the one state alone to be then decisive? Then the only true law of the land is anarchy.

Yet Webster did not limit himself to these unanswerable arguments, deduced directly from the idea of the state. To his and his country's harm, the advocate in him always spoke loudly in the reasoning of the statesman. This time, indeed, the exterior arrangement of his argument was so unfortunate that its opponents could, with a strong seeming of justice, declare that the final basis of his proof was useless hypercriticism which rested upon claims which were proved to be historically false and against which his own earlier speeches could be quoted.[1] Calhoun was thus able to do more than confine himself to a precarious defense in his answering speech of Feb. 26. Yet this speech could have no influence upon the decision of the questions just then under discussion, since the senate had already, on Feb. 18, ordered the force bill to a third reading by thirty-two to eight votes[2] and the fate of the tariff bill, too, had already been practically decided, although this had not been formally passed. For an instant it, and with it the prospect for a compromise, was seriously threatened. On February 21, Clay brought in an amendment, according to which the duties were to be reckoned, not by the declared value of the goods at the port of export, but by an appraisement of their value at the port of import. This was a blow which Clay dealt wholly unexpectedly and, as it were, from an ambush laid against his new comrades.[3]

[1] See Webster, Works, III., pp. 453–457, and Calhoun's answer, Works, II., pp. 262–309. Compare also Wash., Writ., IX., pp. 278, 389, 390; Ann. of Cong., I., pp. 932–935.

[2] Deb. of Congress, XII., p. III. On the final passage, the vote was thirty-two to one, since all the opponents of the bill, except Tyler, had withdrawn.

[3] Benton, Thirty Years' View, I., p. 322.

Calhoun at once declared that there were "insuperable constitutional objections" to this amendment; he "should be compelled to vote against the whole bill, should the amendment be adopted."[1] Clayton replied to this, saying that the bill with the amendment was the farthest concession to which he and his friends—"only for the sake of arriving at a reconciliation"—could agree; if Calhoun was not willing to accept it in this sense, he (Clayton) would have to move to lay it on the table. It was very hard for the proud planter not to stand unconditionally by his word this time, especially since he had declared the amendment to be unconstitutional. But the protectionists were resolved not to let themselves be bullied any longer, and what Calhoun would have endangered by his obstinacy was out of all proportion with what he would sacrifice by yielding. On the next day he voted for the amendment, yet only "under two conditions,"—that a method of appraisement should be adopted, which would neither interfere with the equality of all imposts demanded by the constitution nor "make the duties themselves part of the appraised value," so that "the taxes would be taxed." This was meaningless talk; he sought by some adroit pretences and some weighty blows dealt in the air to make the discomfiture which he had unexpectedly suffered seem as small as possible.[2] While he abandoned the field to his opponents on this one point, he still maintained his position on all the others.

Clay now discharged all the duties of his alliance with his whole zeal. He defended the bill, January 25, against Webster and his comrades,[3] ascribing to them the entire responsibility for the danger to which not only the peace of the Union but the protective policy was exposed by their

[1] Deb. of Cong., XII., p. 112.

[2] Compare Clayton's speech at Wilmington, June 15, 1844. Colton, Life and Times of H. Clay, II., p. 258 and before.

[3] Clay, Speeches, II., pp. 157–176.

opposition. He pointed out as his main motive the probability that at the next session of congress the opponents of protection would have the upper hand, and declared that an agreement could therefore be arrived at now at a less cost than then.[1] Yet he did not deny the influence which the fear of a civil war had exerted upon his conclusions, and he confessed that he thought war almost unavoidable if the next congress did not give the redress solicited.[2] As circumstances were now, he said, a man could only cherish, as a patriot as well as a protectionist, the most earnest wish to see a decision made by this congress.

If Clay's wish was to be realized, the majority of the house as well as of the senate must be thoroughly impressed with the conviction that the greatest danger was delay. The congress had only a few days more of life, and in the ordinary course of business it would have needed weeks under the most favorable circumstances before a

[1] "In this body we lose three friends of the protective policy without being sure of gaining one. Here, judging from present appearances, we shall at the next session be in the minority. In the house it is notorious that there is a considerable accession to the number of the dominant party [the Democrats]. How, then, I ask, is the system to be sustained against numbers, against the whole weight of the administration, against the united south, and against the increased impending danger of civil war? . . . Two states in New England, which have been in favor of the system, have recently come out against it. Other states of the north and east have shown a remarkable indifference to its preservation. If, indeed, they have wished to preserve it, they have nevertheless placed the powers of government in hands which ordinary information must have assured them were rather a hazardous depository."

[2] Virginia "has deputed one of her most distinguished citizens [B. W. Leigh] to request suspension of the measures of resistance. No attentive observer can doubt that the suspension will be made. Well, sir, suppose it takes place and congress should fail at the next session to afford the redress which will be solicited, what course would every principle of honor and every consideration of interests, as she understands them, exact from her? Would she not make common cause with South Carolina? And if she did, would not the entire south eventually become parties to the contest?"

tariff bill could be submitted to the president for signature. The Opposition in the senate held fast to the assertion that this was a bill which, according to art. I., sec. 7, § 1 of the constitution, must originate in the house, and the house was still squandering its time over the Verplanck bill. It had lost sight of consequences, as soon as the first excitement was over, for it broke with the protective system too quickly and too completely. In order to get both difficulties out of the way at once, Letcher moved, February 25, at the instant when the house was getting ready to adjourn, to strike out the whole Verplanck bill after the enacting clause and to put in its stead the bill introduced by Clay into the senate.[1] The representatives of the manufacturing states of the north were completely surprised and excited to the highest degree, inasmuch as the other fractions of the house had evidently come to a secret agreement beforehand and were resolved to allow no debate. Davis of Massachusetts could only utter a few words of protest against such a rough and ready way of law-making, and then, by one-hundred-and-five to seventy-one votes, the third reading was ordered before, as Benton says, the dinner had become cold, which had been served up just as Letcher made his motion.[2] The following day the bill was passed by one-hundred-and-nineteen to eighty-five votes.[3]

The house now took up the force bill. February 8, the judiciary committee, to which the president's message of January 16 had been referred, had presented a report which declared the use of force against South Carolina to be impolitic and unjust from every point of view. Whether the federal government had the right to resort to such means under any circumstances whatever, was left unanswered, but it was evident that the committee doubted the

[1] Deb. of Congress, XII., p. 170.

[2] Benton, Thirty Years' View, I., pp. 310–312; Deb. of Cong., XII., p. 175.

[3] Deb. of Congress, XII., p. 181.

existence of the right. It was, in its opinion, the "imperative duty" of congress to alter the existing law, for if a state was determined to oppose the law "at any risk," the complaints against it were evidently well grounded.[1]

The committee report had expected too much from the political judgment and from the feelings of nationality and honor of the majority, when it urged the latter to formally declare the impotence of the federal government and, so to speak, to invite the states to make use of this impotence by subordinating national to particularistic interests. The majority was not willing to unnecessarily sacrifice the appearance at any rate; but more than this it could not save. House and senate now supplemented each other's actions in a way of which the Philadelphia convention would scarcely have dreamed. The senate first did justice in theory to the supremacy of the law by passing the force bill. The house bowed before the necessity of harmonizing practice with theory, but delayed its recognition of the latter until the senate adopted the tariff bill already passed by the house, with which South Carolina was willing to be bought off from opposing the law. M'Duffie asked in vain what practical aim the force bill had now.[2] Foster exhorted the remarkable representative, who considered any farther resistance by South Carolina possible, after every senator and every representative of the state had voted for the tariff, to rise in his seat.[3] No one craved the laughable distinction, but yet the third reading was ordered by one-hundred-and-twenty-six to thirty-four votes,

[1] See the report and the bill brought in by the committee in Niles' Reg., XLIII., Suppl., pp. 48, 49. Very significant is the committee's apprehension that "among the unhappy results of the application of force, there is reason to fear that, from a controversy between the general government and a single state, it would extend to a conflict between the two great sections of the country and might terminate in the destruction of the Union itself."

[2] Niles' Reg., XLIII., Suppl., p. 263.

[3] Deb. of Congress, XII., p. 190.

whereupon the senate passed the tariff bill by twenty-nine to sixteen votes.[1] Jackson signed both bills on the second of March.[2] March 16, the South Carolina convention repealed the ordinance of nullification.[3]

Thus Clay's second great "compromise," which was scarcely less portentous to the country than the first, came into being. South Carolina had not obtained all she at first demanded, but the Union had lost much and won nothing. The protective duties were not done away with; only a gradual reduction had been granted;[4] and no concessions had been made as to the constitutionality of the protective system. But as far as the deeper meaning of the contest is concerned, the only point of importance is that the delay in the decision of the principle involved in the question had been bought by concessions. It matters not how great the concessions of the federal government were.[5] The latter had not given up the principle; the force

[1] Deb. of Cong., XII., pp. 191, 123.

[2] Parton (Life of Jackson, III., p. 481) says: "That the president disapproved this hasty and, as the event proved, unstable compromise, is well known. The very energy with which Col. Benton denounces it shows how hateful it was to the administration." This passage characterizes Parton's value as an historian. Benton writes: "Gen. Jackson felt a positive relief in being spared the dire necessity of enforcing the laws by the sword and by criminal prosecutions." Thirty Years' View, I., p. 346.

[3] Curtis (Life of Webster, I., p. 456) says that the ordinance was never formally revoked. The fact that the repeal, on the motion of S. D. Miller, was signed only by the president and secretary of the convention does not justify this assertion. See the proceedings concerning the repeal in Niles' Reg., XLIV., pp. 57, 86–88.

[4] The duties were to be decreased by 1842 to 20 per cent. *ad valorem*. See the law (Statutes at Large, IV., pp. 632–635).

[5] The fear that the constitution would perhaps not stand the last test was not the only reason that it was not subjected to it. Clay wrote Brooks, Jan. 17, 1833: "As to politics, we have no past, no future. After forty-four years of existence under the present constitution, what single principle is fixed? The Bank? No. Internal improvements? No. The tariff? No. Who is to interpret the constitution? We are as much afloat at sea as the day when the constitution went into operation. There

bill was an indirect declaration that it held fast to that. Yet Calhoun, immediately after the force bill had been passed by both houses, had solemnly affirmed that he, too, did not yield the least point of his principles. Clay declared that the protective system had obtained a new "lease" for nine

is nothing certain but that the will of Andrew Jackson is to govern; and that will fluctuates with the change of every pen which gives expression to it." (Clay's Priv. Corres., p. 347.) And on Jan. 23: "It is mortifying—inexpressibly disgusting—to find that considerations affecting an election, now four years distant, influence the fate of great questions of immediate interest more than all the reasons and arguments which intimately appertain to those questions. If, for example, the tariff now before the house should be lost, its defeat will be owing to two causes,—1st, the apprehension of Mr. VanBuren's friends that if it passes, Mr. Calhoun will rise again as the successful vindicator of southern rights; and, 2d, its passage might prevent the president from exercising certain vengeful passions which he wishes to gratify in South Carolina. And if it passes, its passage may be attributed to the desire of those same friends of Mr. VanBuren to secure southern votes." (Ibid, p. 348). It was an equally significant fact that Jackson's position on the constitutional question was uncertain and wavering. A part of his supporters found in the proclamation of December 11 the "consolidation ideas" of the old Federalists. The *Congressional Globe* met this reproach with a long, "authorized" article, in which Jackson let it be stated that he recognized, not only in the states but in the state governments, the rights claimed in the Virginia and Kentucky resolutions. The article said: "Its [the proclamation's] doctrines, if construed in the sense they were intended, and carried out, inculcate . . . that in the case of the violation of the constitution of the United States and the usurpation of powers not granted by it on the part of the functionaries of the general government, the state governments have the right to interpose and arrest the evil, upon the principles which were set forth in the Virginia resolutions of 1798 against the alien and sedition laws; and finally, that in extreme cases of oppression (every mode of constitutional redress having been sought in vain) the right resides with the people of the several states to organize resistance against such oppression, confiding in a good cause, the favor of heaven and the spirit of freedom, to vindicate the right." A. H. Stephens (The War Between the States, I., pp. 462–469) gives the main contents of the article verbatim. Tyler (Memoir of Roger B. Taney, p. 188) says: "When the instrument [the proclamation of Dec. 11], as prepared by Mr. Livingston, was presented to Gen. Jackson, he disapproved of the principles and doctrines contained in it. But as the conclusion suited him, he determined to issue it at once, without

years. This was true, even if the conditions of the lease were much more unfavorable than before. But it might have been said with the same right that the union-constitutional party had only agreed upon a new lease for an uncertain time, and indeed with a mental reservation, on the part of the state-rights men, of the power to terminate the lease at any instant. It was mere talk when Calhoun said: "The opposition of the south [to the force bill] will never cease until the act has been erased from the statute-book." As the majority had the courage to trumpet abroad to the world a force-law, when nothing remained to be forced, so the minority had the courage to declare eternal war against the law when it had resolved to no longer provoke the application of force. But if the tariff could scarcely have produced such a crisis a second time, although the discord had by no means been brought to a definite end by the compromise, yet the possibility was not in the least diminished that ere long new and worse crises would have to be met. The struggle over the tariff was itself in great part only a manifestation of a deeper discord, and it had not now been forgotten where the root of the whole matter lay.[1] If a new crisis was immediately evolved from this

waiting to correct the erroneous doctrines contained in it." Tyler has not a single fact to bring forward as a proof of this, any more than Neumann has for the opposite assertion already mentioned. Compare the note sent by Jackson to Livingston in Hunt, Life of Edw. Livingston, pp. 371, 372.

[1] "The contest will, in fact, be a contest between power and liberty, and such I consider the present,—a contest in which the weaker section with its peculiar labor, productions and institutions, has at stake all that can be dear to freemen." Calhoun, Works, II., p. 261. Moore of Alabama said in the senate: "Disguise this matter as you will, this is the question. We have long seen the tendency and object of the tariff policy. We deny your right to protect the free labor of the north at the expense of the slave labor of the south. . . And it is because I believe the bill involves this question, and because I know the people of Alabama have a common interest with the people of South Carolina in resisting this oppression, that I am opposed to this bill." Niles' Reg.,

one, the eyes of even the politically blind must open to the vast scope of the triumph of one state with a population of 581,185—315,401 of them slaves—over the Union with a total population of 12,866,020.[1] Robbins of Rhode Island had rightly called the tariff bill, in the senate, a "practical recognition" of the right of nullification,[2] and John Quincy Adams had cried out in warning to the house that the result of paying such a premium for rebellion against the law must infallibly be the dissolution of the Union.[3] As facts began to prove the truth of this prophecy, the most unreserved admirers of Jackson and the most conservative Democrats recognized the fact that the Carolinian,

XLIII., Suppl., p. 144. Quincy (Life of J. Q. Adams, p. 199) relates that Adams said, after a conversation with Oliver Wolcott: "He holds the South Carolina turbulence too much in contempt. The domineering spirit naturally springs from the institution of slavery; and when, as in South Carolina, the slaves are more numerous than their masters, the domineering spirit is wrought up to its highest pitch of intenseness. The South Carolinians are attempting to govern the Union as they govern their slaves, and there are too many indications that, abetted as they are by all the slave-driving interest of the Union, the free portion will cower before them and truckle to their insolence. This is my apprehension."

[1] The figures are taken from the census of 1830.

[2] "That state [South Carolina] hath neither disarmed herself nor renounced this power. Now we offer to her this bill to induce her, not to renounce this power, but to refrain from its exercise at present. Is not this a practical recognition of this fatal power? What is to hinder this state from resuming this attitude hereafter? Who is to hinder any other from assuming the same attitude, by this power to wrest from the general government any one of its powers or, what amounts to the same thing, prevent its exercise? In that case, by this precedent, we are either to yield the disputed power or to buy off the Union by a compromise." Deb. of Congress, XII., p. 123.

[3] "One particle of compromise with that usurped power or of concession to its pretensions would be a heavy calamity to the people of the whole Union . . . and directly lead to the final and irretrievable dissolution of the Union." Speech of Feb. 4, 1838. Quincy, Life of J. Q. Adams, p. 208, seq.

whom they had seen in spirit already hanging on the gallows, had wrung victory from the "iron man."[1]

It was a terrible victory; the vanquished have been terribly scourged for the defeat suffered through their sin, and the victors have been shattered to pieces by the results of the accursed victory. But conquered and conquerors brought down punishment upon themselves because they did not understand one thing, or, if they understood it, would not live up to it: "Sovereignty can only be a unit and it must remain a unit,—the sovereignty of law."[2]

[1] Benton, Thirty Years' View, I., p. 585; Buchanan's Administration, p. 92.

[2] Bismarck, May 14, 1872. Held, Die Verfassung des deutschen Reiches, p. 19.

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